IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO ..... OF 2022
(PIL UNDER ARTICLE 32 OF THE CONSTITUTION)

IN THE MATTER OF:

Nikhil Upadhyay
S/o Sh. Ashwini Kumar Upadhyay

Verses

1. Union of India
   Through Home Secretary,
   Ministry of Home Affairs, North Block, New Delhi-110001
2. Union of India
   Through Education Secretary,
   Ministry of Education, Shashtri Bhawan, New Delhi-110001
3. Government of Andhra Pradesh
   Through Chief Secretary
   A.P Secretariat Office, Velagapudi – 522503
4. Government of Arunachal Pradesh
   Through Chief Secretary
   Civil Secretariat, Itanagar – 791111
5. Government of Assam
   Through Chief Secretary
   Assam Sachivalaya, Dispur - 781006,
6. Government of Bihar
   Through Chief Secretary
   Main Secretariat, Patna – 800015
7. Government of Chhattisgarh
   Through Chief Secretary
   Mahanadi Bhawan, Mantralaya Naya Raipur – 492002
8. Government of Goa Secretariat
   Through Chief Secretary
   Porvroim, Bardez, Goa – 403521
9. Government of Gujarat
   Through Chief Secretary
   Sachivalaya, Gandhinagar – 382010
10. Government of Haryana

Through Chief Secretary
Haryana Civil Secretariat, Sector-1, Chandigarh– 160019

11. Government of Himachal Pradesh
Through Chief Secretary
H.P. Secretariat, Shimla – 171002

12. Government of Jharkhand
Through Chief Secretary
Project Building, Dhurwa, Ranchi- 834004

13. Government of Karnataka
Through Chief Secretary
Vidhana Soudha, Bengaluru - 560 001

14. Government of Kerala
Through Chief Secretary
Secretariat, Thiruvananthapuram – 695001

15. Government of Madhya Pradesh
Through Chief Secretary
Mantralaya, Vallabh Bhavan Bhopal – 462004

16. Government of Maharashtra
Through Chief Secretary
Main Building, Mantralaya, Mumbai – 400032

17. Government of Manipur
Through Chief Secretary
South Block, Old Secretariat, Imphal-795001

18. Government of Meghalaya
Through Chief Secretary
Rilang Building, Meghalaya Secretariat, Shillong – 793001

19. Government of Mizoram
Through Chief Secretary
New Secretariat Complex, Aizawl – 796001

20. Government of Nagaland
Through Chief Secretary
Civil Secretariat, Kohima- 797004

21. Government of Odisha
Through Chief Secretary
Odisha Secretariat, Bhubaneswar – 751001

22. Government of Punjab
Through Chief Secretary
Secretariat, Chandigarh – 160001

23. Government of Rajasthan

Through Chief Secretary
Secretariat, Jaipur – 302005

24. Government of Sikkim
Through Chief Secretary
New Secretariat, Gangtok – 737101

25. Government of Tamil Nadu
Through Chief Secretary
Secretariat, Chennai – 600009

26. Government of Telangana
Through Chief Secretary
BRK Rao Bhavan, Adarsh Nagar, Hyderabad-500063

27. Government of Tripura
Through Chief Secretary
New Secretariat Complex Secretariat, Agartala-799010

28. Government of Uttar Pradesh
Through Chief Secretary
LalbahadurSastri Bhawan, Secretariat, Lucknow – 226001

29. Government of Uttarakhand
Through Chief Secretary
Subhash Road, Uttarakhand Secretariat, Dehradun – 248001

30. Government of West Bengal
Through Chief Secretary
Nabanna, Sarat Chatterjee Road, Howrah – 711102

31. Union Territory of Delhi
Through Chief Secretary
Delhi Secretariat, IP Estate, New Delhi – 110002

32. Union Territory of Puducherry
Through Chief Secretary
Main Building, Chief Secretariat, Puducherry – 605001.

33. Law Commission of India
Through the Chairman/Secretary
Loknayak Bhawan, Khan Market, New Delhi-110003.....Respondents

PIL UNDER ARTICLE 32 SEEKING STRICT COMPLIANCE OF COMMON DRESS CODE IN ALL STATE RECOGNIZED EDUCATIONAL INSTITUTIONS

To,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this PIL under Article 32 seeking appropriate writ, order or directionto the Centre and States to take appropriate steps to implement Common Dress Code in registered and State recognized Educational Institutions in order to secure social equality, assure dignity and promote fraternity, unity and national integration.

2. Petitioner submits that role of universal education for strengthening social fabric of democracy through provisions of equal opportunity to all has been accepted since the inception of our republic. Thus, Common Dress Code is not only necessary to enhance the values of equality, social justice, democracy andto create a just and humane society but also essential to curtail the biggest menace of casteism communalism classism radicalism separatism andfundamentalism.

3. Petitioner submits that in US, UK, France, Singapore and China, allSchools and Colleges adhere toCommonDress Code despite frequent challenges to the constitutionality of dress guidelines. Most Court rulings support the Common Dress Code because the use of common dress codehas many benefits. Petitioner submits that according to a survey, around2,50,000 guns were brought in

schools and collegesin 2018. So, having a Common Dress Code that requires a student's beltline exposed reduces the fear of a concealed weapon.

4. Common Dress Code not only reduces violence but also promotes a more positive educational environment. Itreduces other forms of violence that occur due to socio-economic differences. It ensures that every student looks relatively same which reduces the chances of bullying in schools.Ithelpsstudents stay focused on their studies.When students wear same dress, then there are fewer concerns with how each person can fit in with their peers. Creating uniformity on campus with clothing reduces visual comparisons that students make about the socio-economic status of each person.

5. Students score better when there is a common dress code.Theuse of a common dress code helps to enhance school and community pride.When students follow a CommonDress Code then there are higher levels of pride associated with such an action. Over 1,000 Schools in Texas were studied to look at the impact of uniforms in classroom and researchers noted that there were significantly higher positive perceptions about the entire community when compared to those who wear whatever they want.When there is a

sense of belonging created in the classroom, then there are higher levels of caring, respect, and trust throughout the school. The students feel like they are part of a team instead of trying to do everything by themselves.

6. Schools see improvement in attendance with uniforms.The average absence rate in students falls by around 10% after common dress code is enforced. There might still be some behavioral issues that teachers/administrators must handle each daybut the problems shift towards concerns with less severity. Benefits of this advantage can include a lower suspension rate and a higher graduation percentage. The presence of a dress code creates a more disciplined environment, lower noise levels, and less waiting time to start class.

7. Implementation of a Common Dress Code prevents gang affiliation colors that's why the U.S. Department of Education endorses a strict dress code that includes uniforms because it prevents gang displays. The goal is to prevent gang members from showing their insignias or colors while in the classroom, thereby creating safer learning environment for everyone. In US, 1 in 10 kids during2015 academic year said that there were gang members at their schools, so taking them out of their "uniform" to put them into one mandated by the

district has a positive impact on their learning.This advantage makes it more of a challenge for student gang members to recruit new people while going to class as well.Moreover, Common dress codes make it easier for students to get ready for class in morning.

8. Students spend less time trying to decide what to wear to school when there is a common dress code in place. When wardrobe battles disappear in the family, then it gives children more time to manage their morning routine. That means there are opportunities to sleep in more before trying to catch the bus or make it to the classroom. The implementation of a mandatory uniform also reduces tardiness.
9. Common Dress Code is economical and cost effective.Even though the cost of a uniform may be more than a standardized apparel, there are fewer apparel items that need to be purchased during the year. A study of costs in this area found that the cost of purchasing school uniforms was less.Even though every school might have a different apparel standard but every districtcan follow a common theme.
10. Dress codes help administrators to instantly identify trespassers. When everyone in the school is dressed in the same way, then the presence of a dress code makes it easier to spot someone who is out

of place. This advantage also works in reverse by helping teachers to identify their students when they are on a field trip. It is another tool that helps to create safer classrooms because an emergency response can initiate instantly if needed, including “soft” lockdowns, since the individual not following the rules will stand out immediately.

11. **The Cause of Action** accrued on 10.2.2022, when protests were held in several areas of the national capital against the hijab curbs in Karnataka. Petitioner submits that educational institutions are secular public places and are meant to impart knowledge and wisdom employment, good health and contribute to nation building, not to follow essential and non-essential religious practices.It is very essential to introduce a Common Dress Code in all Schools-Colleges to preservethe secular character of educational institutions, otherwise tomorrow ***NagaSadhus****may take admission in colleges and attend the class without clothes citing essential religious practice*.Petitioner submits that Common Dress Code is not only necessary to maintain uniformity but also to instill a sense of camaraderie among students from different caste, creed, faith, religion, culture and place.

12. Petitioner respectfully submits that State recognized schools-colleges must strictly implement Common Dress Code in order topromote fraternity dignity unity and national integration. College must not allow suchdresses which indicate any faith or religion, as educational institutions are not the placesof religious adherence.It also creates barriers among students as well as teachers and anything which affects unity and gives scope of groupism should not be allowed at any cost.

13. **The injury topublic is large** becauseeducational institutions accommodate students from various faith, culture and religions so it becomes very important to implement common dress code to uphold and give effect to the principle of secularism and neutrality in interest of harmony, discipline, fairness. Educational institutions have right to implement common dress code to prohibit religious clothing symbols and itisirrational to expect from secular institutions to accommodate every religious and cultural expectation of a diverse community.

14. In **Fathima ThasneemCase[(2018) SCC Online KER 5267],**two girls demanded to attend classes wearing headscarf and full-sleeve shirt, which were against the Dress Code of school. The Courtruled that individual's interest must give way when two rights

collide.*"The dominant interest, in this case, is the management of the institution. If the management is not given free hand to administer and manage institution that would denude their fundamental right. 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."*

15. Petitioner submits that Common Dress Code brings homogeneity and homogeneity brings a sense of equality. Thus, common dress code is important in educational institutions because these are places where there must not be any type of discrimination. A college always has students from all parts of society. There would always be some rich, middle-class and even poor students. While some may have the luxury to meet the expense of the finest trends, the others who don't have enough money can only marvel about such things. This damagesthe self-confidence in such students, triggering feelings of inferiority, jealousy, insecurity, or even depression. Having a dress code brings a sense of belongingness, makes the

students feel united and is the easiest way to recognize students' educational background. Students should not be affected by socio-economic disparities and cultural differences which every educational institution should take care of.

16. Dress Code brings discipline and discipline brings order, peace, and a sense of leadership. Dress code brings uniformity which is interlinked to order and peace. Following a particular pattern of dressing creates a formal environment and preparesstudents for the professional world and its working. Educational institutions are meant for studies and are not a platform for showing off one's possessions which is exactly what college students start doing on competing with their peers. This sense of competition is wrong and the focus shifts from their main objectives. Obviously dress codes cannot be the only solution to such situations but it has its own positive effects.

17. Research says dress codes have an intense impact on students' concentration level. It helps students focus more on studies and less on how they look. Dress codes have the ability to make students stop fidgeting, stop thinking about why their friend is getting more attention for their looks instead of them, and create a carefree

attitude. Apparently, peer pressure can extend to the extent where even an academically bright student might feel fed up of feeling left-out among their 'good-looking' friends (as the definition of 'good-looking' changed a long time ago).

18. Lesser financial burden is one of the greatest advantages of dress code. There is no such obligation of buying dozens of clothes every now and then. Having a dress code means aonetime investment that is cheaper than other fancy dresses. There would be no feeling of repetition of clothes because there's only one single pattern and everybody's following that; no compulsion of impressing the crowd. Thus, one gets to focus more on their personality.

19. One of the most important reasons for students to wear uniforms, is to give a sense of equality. In today's world of fashion trends and brands, clothing has become a status symbol for children in schools. Uniforms negate that and instill a sense of oneness amongst them. In that way, it does not give a chance to bullies from richer backgrounds to discriminate and pick on the poor ones with regards to their clothing and as a result, they do not feel alienated. By wearing uniforms, students will no longer feel insecure about the way they look, their social status and will no longer have a low self-

esteem. Thus, they will not have the pressure to conform to the society in terms of their peers and will be able to put their energies to learning and study. A common dress code enables a student to express and define himself, be it in arts, sports, music, academics irrespective of the students' background and will no longer use fashion as a means of defining their creativity. It is common to see nowadays having a wardrobe overflowing with clothes. As a result, students would spend inordinate amounts of time deciding the perfect outfit to wear to school that day. This consumes a lot of time. With uniforms, students would know exactly what to wear, and would not be obsessed with wearing the 'perfect' outfit. This can avoid an argument with parentsover getting late to school and will overall save a lot of time. Wearing uniform reduces absenteeism, promotes school attendance, increases attention to their studies and instills a lot of discipline, focus and good behavior. Most importantly, it induces presentation skills, which help them talk with confidence and gives motivation and purpose.

20. Common dress code promotes a more serious school atmosphere which emphasizes academics and promotes good behavior.Dress codes have proven to increase student achievement by encouraging

students to concentrate more on their studies and less on their wardrobe. A de-emphasis on clothing can also save money, as there will be less pressure to keep up with expensive trends and fashions.Dress codes in school settings reduce social conflict and peer pressure that may be associated with appearance.Studies indicate that a school dress code can reduce the prevalence of certain behaviorswhich are often expressed through wardrobes.

21. Petitioner respectfully submits that France was the first European country to put a ban on wearing a burqa or niqab in public. The legislation has been in force since April 2011. In order to quell allegations of discrimination, the wording of the law deliberately avoids mentioning religious veils, stating instead in general terms: "In the public sphere, no-one must wear an item of clothing that serves to cover the face." In addition, wearing any kind of religious clothing (including head scarves) in schools has been banned since 2004. The ban is estimated to affect only some 2,000 Muslim women. This is because it is believed that only this small number of women opt for the veils in a population of five million Muslims. While introducing the ban, President Nicolas Sarkozy had said that the veils oppress women and were 'not welcome' in

France. As per the law, wearing a full veil attracts a €150 fine and obstruction in citizenship. Anyone found forcing a woman to cover her face risks a €30,000 fine. In 2016, the European giant took it one step further and also banned burkinis and women's full-body swimsuits. The Prime Minister Manuel Valls had called the swimsuits "the affirmation of political Islam in the public space". It was later lifted in seaside resorts after France's top administrative court overruled the law.

22. Switzerland joined the list of European nations banning the niqab in 2021. In March, over 51% of Swiss voters cast their ballot in favour of the initiative to ban people from covering their face completely on the street, in shops and restaurants. According to the law, full facial veils will still be allowed to be worn inside places of prayer and for "native customs", such as a carnival. The ban came after the Italian-speaking region of Ticino voted in favour of ban on face veils in public areas by any group in 2013. Discussions on banning face veils in Switzerland cropped up in 2009 when Justice Minister Eveline Widmer-Schlumpf said a face-veil ban should be considered if more Muslim women begin wearing them, adding that veils made her feel "uncomfortable".

23. In 2018, Denmark became another European nation to introduce a ban on face coverings in public places. Offenders can incur fines of up to €134 ($157). Repeated offenses are punishable by up to 10 times that amount. The legislation does not specifically mention Muslim women but says that "anyone who wears a garment that hides the face in public will be punished with a fine". A law banning the full-face veil came into effect in Belgium in July 2011. The law bans any clothing that obscures the identity of the wearer in places like parks and on the street. Anyone who breaks the law risks a fine or up to seven days in jail. Support for the legislation crossed the ideological spectrum, calling it an effort to promote gender equality.

24. If someone covershis face with a veil in the Netherlands, he faces a fine of at least €150. The ban not only applies to burqas and veils,butalsofull-facehelmetsandbalaclavas.Netherlandsintroducedthe ban after 14 years of debate. In 2005, the Dutch parliament surprisingly voted in favor of a proposal for a complete ban on burqas. The parliament passed a milder version of the proposal in 2016.

25. In Austria, the ruling coalition agreed inJanuary 2017 to prohibit full-face veils (niqab-burka) in public spaces such as courts and schools,

with the law coming into force in October the same year. 'Law against Wearing Face Veils', requires people to show their facial features from chin to hairline. If that area is not visible, they face a fine of up to €150. Like the Netherlands, Bulgaria introduced a burqa ban in 2016. Wearers face a fine of up to €750 if they break it. There are some exceptions for people playing sport, at work or in a house of prayer.

26. Very recently, in April 2021, Sri Lanka's cabinet approved a proposed ban on wearing full-face veils including Muslim burqas in public, citing national security grounds, despite a United Nations expert's comment that it would violate international law. Public Security Minister SarathWeerasekera has called burqas, a garment that covers the body and face worn by some Muslim women, a "sign of religious extremism" and said a ban would improve national security. The wearing of burqas was temporarily banned in 2019 after Easter Sunday suicide bomb attacks killed more than 260 people.

27. Similarly,Russia's Stavropol region has a ban on hijabs: the first of its kind imposed by a region in the Russian federation. The ruling was upheld by Russia's Supreme Court in July 2013.

28. Object of inserting 'Socialist, Secular, Integrity' in Preamble was to spell out expressly the high ideas of socialism secularism nationalism because many institutions have subsided to considerable stresses and strains and vested interests having trying to promote their selfish ends to great detriment of public goods. The object was to make explicit what wasalready provided in the Constitution, but which, in absence of such emphasis was going to be denigrated by 'vested interests' to promote their selfish ends. As far as 'socialism and secularism' is concerned, relevant provisions are Articles 14-30. Secularism means that the State should have no religion of its own, and no one could proclaim to make the State house or endeavor to create a theoretic State. Secularism is part of basic structure and means equal treatment to all. It is a system of utilitarian ethics, seeking to maximize human happiness and welfare quite indecently of what may be religious. It means there shall be no discrimination on the ground of religion. Therefore, common dress code is permissible in all the registered and recognized schools and colleges.

29. India is a Union of States, and not an association or confederation of States. There is only one nationality and every citizen has a right to go or settle anywhere in India. In order to keep the country united, it

is necessary to have tolerance and respect for all community and sects. The word 'Secularism' used in the Preamble is also reflected in Article 51A. 'Secularism' has to be understood based on 72years' experience of working of Constitution. Complete neutrality towards religion and apathy for all religious teachings in institutions have not been helped in removing mutual misunderstanding and intolerance between section of people of different religions, faiths and beliefs. 'Secularism' therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. Essence of secularism is non-discrimination on religious ground. Based on *SarvaDharmaSambhava*, a definition of "Secular" was attempted by 45th Amendment Bill,:*"In the Preamble of the Constitution – the expression 'Republic' as qualified by the expression 'Secular' means a republic in which there is equal respect for all religions."* Butadoption of the definition was blocked in the Constitution through 80th Amendment Bill 1993, which proposed to insert a new Article 28A on lines of that definition: *"The State shall have equal respect for all religions"*.

30. The Preamble proudly announces that India is a Socialist Secular Democratic Republic. Democracy would indeed be hollow if it fails to

generate a spirit of brotherhood among all sections, a feeling that they are children of the same soil and that is why a common dress code is essential. It becomes even more essential in a country like ours, composed of so many races religions languages and culture and with so many disruptive forces like Casteism, Communalism, Regionalism and Linguism. It is necessary to emphasize and re-emphasize that 'Unity and Integrity of India' can be preserved only by a spirit of brotherhood which can be instilled through a common dress code.

31. The Courts have consistently taken a view of a demarcation and distinction religious faith and beliefs and religious practises and have passed a catena of decisions on determining the applicability of Article 25 on these two grounds.**In Mohammed Fasi v. Supt of Police, (*1985 KLT 185)*** the constable requested the authorities keeping a beard in consonance with his religious beliefs while being in uniform. The Government had rejected his request being aggrieved the officer filed a writ petition. The High Court dismissed the petition and held: **"*7.*** *It is also not disputed that the petitioner himself had no beard ever since his entry in service in the year 1963 until he submitted his representation Ext P1 in February 1981 for*

permission to grow beard as a religious requirement enjoined by the holy Quran and the words of the Prophet. Counsel for the petitioner was not able to point out anything said in the holy Quran requiring the followers of Islam to grow beard. The practice of growing beard and dyeing hair can only be treated as optional and not obligatory among the Muslims."

32. The Court further relied upon observations made in **VenkatramanaDevaru vs. State of Mysore,*(AIR 1958SC 255)*,** struck a note on as to what is considered as religious practice: ***14 ....***

"Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an

essential and integral part of a religion their claim for protection under Art 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

33. In light of the above the Court observed that the same would also apply in the case of Mohd. Fasi (Supra). The Court drew a distinction between religious faith belief and practice and how practices must give way to the good of the people of the state as a whole by relying upon **State of Bombay vs. NarasuAppa Mali,*(AIR 1952 Bom. 84)***: *18... "Now a sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."*Therefore, the Hon'ble Court concluded by holding that: ***"22.** I have already found that growing beard or dyeing hair is not an essential part of the practice of Islamic religion. There is nothing in Art. 25 of the Constitution to desist the State from restricting or preventing the non-essential practices of religion, the right to profess, practice and propagate*

religion being subject to public order, morality and health. The Police Standing Orders referred to above requiring Police Personnel to have their face and neck clean and shaven are perfectly valid in law. ***26.*** *The petitioner has to abide by the discipline of the service of which he is a member and especially so in the case of Police Service. There is no infringement of the fundamental rights of the petitioner under Article 25 of the Constitution in declining him permission to grow beard on a permanent basis, while in the Police Service. I do not see any merit in this original petition. It is accordingly dismissed."*

34. Following Mohd.Fasi***(Supra)*** and above referred line of judgements, the Madras High Court in **B. Mokhtar Pasha vs. GM BHEL and Ors,*(1987 Writ LR 486),*** has analysed the provisions and tenets of Islam and has reiterated that *"a sharp distinction must be made between religious faith and belief and the religious practices. If, therefore, religious practices ran counter to public order or morality or health or policy of social welfare, then this practice must give way"*.Therefore, the conditions provided in Article 25 would determine the extent of religious practise to be followed. The judgement of **Mohd. Fasi, *(Supra)*** was further followed in the case of **Muhammed Kutty v. Inspector General of Police,*[(1987) 1 KLT***

409], where once again the Court dismissed the plea to allow a constable to grow a beard.

35. In **M Ajmal Khan v. Election Commission of India &Ors,*[(2007) 1 Mad LJ 91],*** a Petition was filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondents from publishing or releasing the Electoral Rolls with the photographs of eligible women voters particularly Muslim Gosha Women voters of all the Constituencies in the State of Tamil Nadu, especially for the ensuring bye-election to Madurai Central Assembly Constituency. The Court relied upon the Judgement passed by the Supreme Court in **M. Ismail Faruqui (Dr.) v. Union of India, (*1994) 6 SCC 360*** wherein the Constitution Bench held *that the protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25.*The Courtfurther relied on the Judgement passed by the Supreme Court in**TMA Pai Foundation v. State of Karnataka,*[AIR 2003 SC 355]** and observed that *"even assuming that the Purdah or Gosha is an*

essential ingredient of the Muslim religion, Article 25 itself makes it clear that this right is subject to public order, morality or health and also to the other provisions of Part III of the Constitution".

36. *In* ***TMA Pai Foundation v. State of Karnataka, AIR 2003 SC 355,*** ***11*** *Judges Bench observed:"82. Article 25 gives to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under Art. 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health. The general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his religion to profess, practice and propagate religion. For example, a person cannot propagate his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.****83.*** *Article 25(2) gives specific*

power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practice and propagate religion conferred on the persons under Article 25(1). Article 25(2)(a) covers only a limited area associated with religious practice, in respect of which a law can be made. A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice."

37. In **Ansari Aaftab Ahmed v Union of India,*(2008 Lab IC 4004),*** the High Court of Punjab and Haryana has examined Article 25 of the Constitution by examining previous judgements passed by various Courts. The Court have recognized the restriction placed on Article 25 **"*28.*** *From the reading of Article 25 of the Constitution of India, it is apparent that the freedom to profess any religion, according to the conscience of a person is protected in respect to all persons. Not only there is freedom to profess any religion, but also to practice and*

*propagate, meaning thereby that every person has a right to promote his religious-beliefs and communicate to others, of course, subject to restrictions like public order, morality and health. The concept of Article 25 of the Constitution of India has been dealt with by the Apex Court in various judgments.*The Court has relied upon the decision of the Hon'ble Supreme Court in the case of **The Commissioner, Hindu Religious Endowments, Madras v. Sri LakshmindraThirathaSwamiar of Sri Shirur Mutt,*(AIR 1954 SC 282)***, where the Hon'ble Supreme Court has *"already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down"*

38. The Hon'ble Court further recorded a similar view, which was expressed by another Constitution Bench of Hon'ble Supreme Court in the case of **RatilalPanachand Gandhi v. the State of Bombay,*(AIR 1954 SC 388)***, wherein it had been very categorically held that*"Article 25 of the Constitution of India guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and*

morality. Further exceptions are engrafted upon this right by Clause (2) of the article. Sub-clause (a) of Clause (2) saves the power of the State to make laws' regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate His religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. 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 of the Constitution 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."

39. The Court further relied on judgement of the Supreme Court in **the Durgah Committee v. Syed Hussain Ali, *(AIR 1961 SC 1402)*** where in the court has examined the scope of Article 25(1): *"...Under Art. 25(1), subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and their right freely to profess, practice and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious belief as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his Ideas for the benefit of others...."*

40. The Court Observed that rights are subject to a condition and has examined the question as to what would be an integral part:32. *From the ratio of the aforesaid judgments, it emerges that religious rights not only of the citizens, but all other persons are fully protected under Article 25 of the Constitution of India subject to the*

restrictions contained in the article itself. However, an allied question which also needs to be ad dressed to, is the extent of the right/protection. Whether every religious belief, constitutes a right which cannot be tampered with or interfered with in any manner or does it refer to only such rights which are fundamental to the religious beliefs and practices and form integral part thereof? The issue is no more res integra having been considered and adjudicated upon by the Apex Court in the famous judgment rendered in the case of Mohd. Hanif Quareshi v. State of Bihar, popularly known as Quareshi-I, reported as AIR 1958 SC 731. The question arose in this case was whether the Cow Slaughter on the Bakr-Id-Day is fundamental religious tenet of Islam and constitutes an integral part of the religious belief of Mohammedans. While dealing with this question, the Hon'ble Apex Court observed: "...13. We have, however, no material on the record before us which will enable us to say in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners..."This question was again considered in depth by the Constitution Bench of the Hon'ble Apex Court in the case of

Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan, AIR 1963 SC 1638 relying upon the case of Quareshi-I, the Court observed thus:"58. In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not.....This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion."

41. *Similar view came to be expressed by another Constitution Bench of the Hon'ble Supreme Court of India in the case of* ***His Holiness SrimadPerarulalaEthiraja Ramanuja Jeeyar Swami etc. v. The State of Tamil Nadu, (1972) 2 SCC 11 : AIR 1972 SC 1586,*** *wherein it has been observed as follows:—"12..... The first, is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies*

and modes of worship which are integral parts of religion, The second is that what constitutes an essential part of a religious or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

42. *This view has been further reiterated in the case of* ***State of West Bengal, etc. etc. v. Ashutosh Lahiri, (1995) 1 SCC 189 : AIR 1995 SC 464,*** *wherein it is observed thus:"8...The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslim consists of making sacrifice of any animal which, should be a healthy animal, on Bakri Idd, then slaughtering of cow is not only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one.".*The Court further held that *"From the ratio of the aforesaid Judgments, it is now settled proposition that only such religious belief or religious rights are protected under Article 25 of the Constitution of India which forms and constitute an integral part of the religious practice*

being adopted by the community as a whole. It is in the light of this established proposition; the right of the petitioners is to be examined".

43. The Court while held that sporting a beard is not an integral part, has examined the regulation from the lens of public order and proceeded to dismiss the Petition:***44****. Though, I have already held here-in-above that sporting a beard is not an integral part of the Islamic religious belief, yet even if it is presumed to be so it can still be regulated/restricted, if public order, moral ity and health so requires. The "Public Order" has not been defined under Constitution, though it has been used under Article 25 of the Constitution of India and may be in some other provisions. The expression "Public Order" has been considered in the case of Ramesh Thapar v. State of Madras, AIR (37) 1950 SC 124, wherein the following observations have been made: "Public Order" is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established."*

44. *Again, in* ***Arun Ghosh v. State of West Bengal, (1970) 1 SCC 98: AIR 1970 SC 1228,*** *Hon'ble the Supreme Court has observed:"If a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order."The expression "Public Order" is also to be looked into in view of the nature of the duties to be performed by a member of the Air Force, Disciplined Belt Force requires high degree of discipline. The regulation relied upon by the petitioner clearly provides that no member of the Force can grow beard without prior permission. The petitioner was refused permission to grow beard after joining service, but he has still sported the beard while on leave and rejoined the Force in complete defiance of the directions of the superior authority which is impermissible particularly for disciplined Force. This clearly demonstrate the mental state of affairs of the petitioner and his defiant attitude. If the members of the disciplined Force are permitted to behave according to their own wishes and desires, it is surely to disturb public order in the Force and may create chaotic conditions.*

45. In **ZahiroddinShamsoddinBedade v State of Maharashtra,*(2013) 3 Mah LJ 701*** the Bombay High Court held that keeping of beard by

a police constable is not a fundamental right under Article 25 and 26 and Article 25 does not confer an absolute right in this regard. The Court examined Article 25 and 26 of the Constitution and observed the merit in the submission of the State that the *police force has to be a disciplined force. Being a law enforcing agency, it is necessary that, such force must have secular image which strengthens the concept of national integration*: *"10. We agree with the submissions advanced on behalf of the State that police force has to be a disciplined force. Being a law enforcing agency, it is necessary that, such force must have secular image which strengthens the concept of national integration. In situation like communal riots posting at places of worship, sensitive areas member of the disciplined force has to discharge his duties. In such situation identity of the members of the force on religious denomination is not advisable to be projected. In the present-day situation considering the peculiar challenges faced by the disciplined police force these realities of life cannot be ignored and lightly brushed aside. It is obvious that, the members of law enforcing agencies, police force are entitled to protection of fundamental rights. Their religious beliefs, sentiments, customs are to be respected".*

46. The Court has further observed that the petitioner could not place before them any piece of evidence demonstrating that keeping beard is a fundamental tenet of Islam or the right of the petitioner to keep beard having any basis under any statutory legislation or guidelines of binding nature. The Court examined Article 25 and concluded that *"The scheme of Article 25 of the Constitution does not confer absolute right in this regard. Rights guaranteed under Articles 25 and 26 have in-built restrictions. The petitioner's stand is based on assertion of existence of religious practice to keep beard. All rights have to be viewed in the context and the letter and spirit in which they were framed under the Constitution"*.The Court further relied upon the cases of MohdKutty, Saifuddin Saheb and Fathema Hussain Sayed to shed light on the meaning of essential religious practises and mere assertions of existence and assumptions would not make it essential.

47. The Court has further reiterated that the while Article 25 confers a right it is 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.:In the case of K.S. Muhammed Kutty v. Inspector General of Police, Trivandrum,*

1987 Lab IC 1278 a Division Bench of Kerala High Court, observed in paragraphs 7 and 8 as under:—"7. Merely on assertions, the existence of a religious practice cannot be found. Nor can it be assumed, on the basis of literature of dubious authority. The Court has to judge the existence or otherwise of a religious practice, in Durgah Committee, Ajmer v. Hussain Ali, AIR 1961 SC 1402 it as held:".... the word "religion" has not been defined in the Constitution, and it is term which is hardly susceptible of any rigid definition Even practices though religious, may have sprung from merely superstitious beliefs and may in that sense be extraneous, unessential accretions to religion itself'.

48.*Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853,* *Court said:"What constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion."Having regard to the material available and the experiences of life, we agree with the view expressed in Mohammed Fasi's case, (1985 KLT 185), that wearing a beard is not a fundamental tenet of Islam. It cannot be treated as part of the religious faith or belief. For that matter it cannot be treated even as a religious practice of general acceptance. The Madras High*

Court also has taken a similar view in B. Mokhthar Pasha v. B.H.E.L. Reported in (1986) 2 Mad LJ 221 (Lex Et Juris; law Magazine September, 1986 issue).

49. *In the case of* ***Fathema Hussain Sayed v. Bharat Education Society, AIR 2003 Bom 75****, a Division Bench of Bombay High Court considered the provisions of Article 25 of the Constitution of India in the facts of the said case:"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.*

50. In Fathima ThasneemCase, a question of religious dress in a private educational institution is main issue. Petitioners are students, who are studying in Christ Nagar Senior Secondary School, a CMI Educational Institution. The petitioners are girl students. They belong to Muslim community and are followers of the Islamic faith. They want to wear the headscarf as well as full sleeve shirt. The school authority found that it is not consistent with the dress code prescribed by the school authority. The petitioners were directed to attend school with a proper dress code, but they did not relent and insisted that they should be permitted to attend classes wearing the headscarf and full sleeve shirt which is not prescribed in the dress code. Since they are not able to obey the instructions in regard to the uniform, a writ was filed.The Court had to determine these rights in light of a larger institutional right and brought a distinction between relative fundamental right and absolute fundamental rights. The Court has held that rights under Article 25 are relative rights*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. (T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481], P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537]).

51. *Imparting education is a state function. Therefore, private educational institutions discharge public function. Assuming that it is not a public function in regard to the prescription of dress code, the Fundamental Rights can be claimed as against the private actors horizontally. Horizontal application of the Fundamental Rights has been accepted by the Supreme Court in various judgments. (I.M.A. v. Union of India [(2011) 7 SCC 179], R. Rajagopal v. State of Tamil Nadu [(1994) 6 SCC 632], PUDR v. Union of India [(1982) 3 SCC 235]).*

52. The Court has further decided to examine conflicting fundamental rights and decided 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. Petitioner respectfully submits that the Constitution itself envisage a Society where rights are balanced to subserve the larger interest of the Society:*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 (Article 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. Petitioner respectfully submits that 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.

53. *In every human relationship, there evolves an interest. In 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 dominant rather than the subservient interest. The dominant interest represents 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 larger interest. That is the essence of liberty.*The Court further laid emphasis on the principle that individual interest must yield to larger public interest:

54. *The Apex Court in* ***Asha Renjan v. State of Bihar [(2017) 4 SCC 397]*** *accepted the balance test when competing rights are involved and has taken a view that individual interest must yield to the larger public interest. Thus, conflict to competing rights can be resolved not by negating individual rights but by upholding larger right to remain, to hold relationship between institution and students.*"*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 petitioners can be permitted to attend the classes with the headscarf and full sleeve shirt. It is purely within the domain of the*

*institution to decide on the same. The Court cannot even direct the institution to consider such a request. Therefore, the writ petition must fail. Accordingly, the writ petition is dismissed. If the petitioners approach the institution for Transfer Certificate, school authority shall issue Transfer Certificate without making any remarks. No doubt, if the petitioners are willing to abide by the school dress code, they shall be permitted to continue in the same school".*In light of the above, it will be observed that rights under Article 25 though fundamental are relative in nature. They give way to larger institutional rights. Prescription of the uniform is under the powers of the institution and the same is to be adhered for standardisation. Individuals cannot seek imposition of their individual right as against the larger right of the institution.

55. There is a distinction between religious faith and belief and Religious Practises. For integral practises to be proved integral it needs to be evidenced and mere assertions of existence and assumptions would not make it essential. While Article 25 confers a right it is 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.

56. *As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a State subject previously. The jurisdiction of Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different States for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30.*

57. ***The court further explains the term minority in context of Article 30 and states that:*** *Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered statewide.*

58. *In this judgment the court arrived at this conclusion by examining two cases pertaining to D.A.V College. In the case of* ***D.A.V College vs. State of Punjab*** *the question regarding to what constitutes religious or linguistic minorities and the criteria to define it. The court after referring many cases held that Arya Samaj is are minority in Punjab even though they may not be at the national level. In the case of* ***D.A.V.College Bhatinda vs. State of Punjab*** *the Supreme Court rejected the contention that since the Hindus are in majority in country they cannot be held as minority in the state. The courts in India have from time to time consistently held that state should be the unit to determine to what constitute minorities.But the executive have not mustered the courage to determine the minority by taking*

*state as the unit as it is a sensitive issue and it is very easy for the government to maintain the status quo.**Jain Community Conundrum:** In the case of **Bal Patil vs. Union of India** the question before the Supreme Court was whether Jains can be declared as minorities under Section 2(c) of National Commission for Minorities Act, 1992. After **T.M.A. Pai case,** the stand taken by the central government in this case is that the ball is in state government's court to declare Jains as minority or not. This argument was countered by saying that the central government cannot shun its statutory duty under Section 2(c) of the above mentioned act. It was also argued that legal position explained in T.M.A. Pai that state shall be the unit of determining minority status does not render the Section 2(c) redundant. **The Court held in this case that-**Before the Central Government takes decision on claims of Jains as a 'minority' under section 2(c) of the Act, the identification has to be done on a state basis. The power of Central Government has to be exercised not merely on the advice and recommendation of the Commission but on consideration of the social, cultural and religious conditions of the Jain community in each state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion.*

59. *The court also held that the majority Jain community members are affluent business men, industrialists and belong to property class and they do not need the protection provided for minorities in the constitution because these provisions are mentioned to protection and preservation for minorities not to provide additional benefits and rewards thus creating inequality in the society. However, the state government of Gujarat had declared Jains as minorities, so the state government are practicing the law laid down the T.M.A. Pai and Central government also declared Jains as minority community in 2014 just before the general election.*

60. ***Are Sikhs are minority in Punjab?-****In the case of* ***Sahil Mittal vs. State of Punjab-****the question before the Punjab and Haryana High Court was whether Sikhs in Punjab are minority or not? The contention raised from the petitioner was that Sikhs are in majority in Punjab and holding strong political and influential position in the society hence they are not non-dominant group in Punjab. In the impugned notification of 1993, country was taken as a unit, which was not permissible after the T.M.A. Pai foundation case. There was no basis for holding the Sikhs to be minority in the State of Punjab. The respondent stressed that many communities which are believed*

to be Sikhs are not in fact Sikhs in strict sense and cited many religious document to further their claim.But the High Court held that: the question is whether there is any iota of material justifying that in the State of Punjab, the Sikhs in general Act were such a group who deserved protection from deprivation of their rights by other communities, who may be in majority and who may gain political power. The answer clearly is in the negative. There is nothing to show from the written statement filed by the State of Punjab that it had any material or even a grievance that as a group, the Sikhs apprehended deprivation of their religious, cultural or educational rights in the State of Punjab from any other community, who may be in majority and who may gain political power in election.

61. *The High Court cited the decision of Supreme Court in the case of* ***The Ahmedabad St.Xavier's College Society and another Ex. v. State of Gujarat and another****, where the apex court held that minority status is given to non-dominant group and the apex court further referred to historical aspect of the matter and observed that the idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to*

give to the minorities a sense of security and a feeling of confidence. The High Court further cited the case of ***Islamic Academy of Education and another v. State of Karnataka and others****, S.B.Sinha, J. in the context of rights of minorities in professional educational institutions, observed that additional protection to minorities was to bring minorities on the same platform as that of non-minorities and the goal of equality could not be ignored.*

62. *To sum up the High Court held that Sikhs are socially, politically and economically dominant group in Punjab and according to the intention of Constitution makers Sikhs as a community do not need protection or preservation because there is no apprehension of deprivation of their cultural or religious rights guaranteed in Articles 25-30 from the dominant groups. However, this decision was stayed by the Supreme Court and the case is pending since then in the Supreme Court.After reading the cases involving Jains and Sikhs we can come to the conclusion that declaration of minorities at the national level is not in accordance to the equality principle enshrined in our constitution. One question however may arise that for example Hindus are in minority in Lakshadweep so suppose minority status is granted to them in there and if he or she moves out from*

Lakshadweep and settled in Mumbai will its minority status remain or not, this raises the question of feasibility of declaring a Hindu minority but to counter this situation one can say that the status of SC gets changed when a SC moves from Uttar Pradesh to Rajasthan or for that matter in any states where SCs and STs are different.

63. *TheHon'ble Supreme Court of India in the* ***Bal Patil case*** *very categorically held that: All religions and religious groups have to be treated equally and with equal respect without interfering with their individual rights of faith and worship. Integrity and unity of India by gradually eliminating the minority and majority classes is the constitutional goal. Atmosphere of mutual fear and distrust can create threat to the integrity of the country and sow seeds of multi nationalism. The Constitution has accepted one common citizenship for every Indian. According to some reports in coming years India will become the home of world's largest Muslim population and if we follow the same law then they will still be minority which may sounds counter-intuitive to some. If we are stern to maintain the status quo then some criteria for population have to be set below which a community will be called minority and above it will be not*

but to set the criteria is in itself very controversial as there will be very difficult to justify it.

64. *The Supreme Court in* ***Bal Patil case*** *said that: The constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority. If we look at the reason for setting up for minority commission, we can deduce that these commissions were setup to maintain integrity and unity of India by gradually eliminating the minority and majority classes. Hindus in the above-mentioned States are facing every situation which the constitutional makers tried to protect the minorities from by providing them which fundamental rights to protect and preserve their rights form dominant groups.*

65. *It is duty of the State to move beyond the minority-majority binary communal politics, which ironically passes for secularism, has been the bane of our democracy. It can be traced back to the British policy ofdivide and rule, the result of which was partition. The Constitution was a repudiation of these ideas and politics that perpetuated them. It rejected the suggestions for a separate electorate for the minorities and the proportional representation system, which it felt would lead*

to a perpetually enervated nation. However, in most policies that have been followed until now, we have seen furtherance of vote-bank politics.

66. **The Power Conferred by Article 32 of the Constitutionof India** is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies"*.

67. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by Supreme Court. Being protector of

civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by **Part-III** in general and under Article 21 in particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[MANOHAR LAL SHARMA (2014) 2 SCC 532]**

68. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]**

69. The power of the Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis as essential in nature, latter is content with mere

similarity. **[M. NAGRAJ & OTHERS v. UNION OF INDIA, (2006) 8 SCC 212]**

70. **Supreme Court cannot refuse an application under Article 32**, merely on the grounds: **(i)** that such application has been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e., declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. **[K.K. KOCHUNNI v. STATE OF MADRAS, AIR 1959 SC 725 (729)] (vii)** that the Article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. **[PRESS TRUST OF INDIA v. UNION OF INDIA, AIR 1974, SC 1044]**

71. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* **[DARYAO v. STATE OF UP, AIR 1961 SC 1457]**

72. In another case, the Supreme Court held: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of*

fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly." **[PREM CHAND GARG v. THE EXCISECOMMISSIONER UP AIR 1963 SC 996].**

73. **The Language used in Articles 32and Article 226 is very wide** and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that

regulate the exercise of jurisdiction in matter of granting such writ are observed **[T.C. BASAPPA v. T. NAGAPPA, AIR 1954 SC 440]**

74. **An application under Article 32 cannot be thrown out simply** because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing bars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. **[CHARANJIT LAL CHOWDHURY v. UOI AIR 1951 SC 41]** Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to **[B.R. RAMABHADRIAH, AIR 1981 SC 1653]**.Supreme Court has power to grant consequential relief to do full and complete justice even in favor of those persons who may not be before the Court or have not moved the Supreme Court. **[PRABODH VERMA v. STATE OF UP AIR 1985 SC 167]**

75. For the protection of fundamental right and rule of law, the Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal

with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of special nature **[PARAMJIT KAUR v. STATE OF PUNJAB AIR 1999 SC 340]**

76. Simply because a remedy exists in the form of Article 226 for filing a writ in High Court, it does not prevent or bar an aggrieved person from directly approaching Supreme Court under Article 32. It is true that Court has imposed a self-restraint in its own wisdom on exercise of jurisdiction where aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its jurisdiction under Article 32. **[MOHAMMED ISHAQ v. S. KAZAM PASHA (2009) 12 SCC 748]**

77. **The Supreme Court is entitled to evolve the New Principlesof Liability** to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person.

It was held that the court was not helpless and the wide powers given to the Court by Article 32 of the Constitution, which is fundamental right imposes a constitutional obligation on the Supreme Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that petition filed is not maintainable in law. **[SAIHBA ALI V. STATE OF MAHARASHTRA, (2003) 7 SCC 250]**

78. Petitioner Name is Nikhil Upadhyay; G-284, Govindpuram, Ghaziabad-201013; Ph: 9911966668, Nikhil.aor@gmail.com, PAN:ANNPU4361N, AADHAAR-927759183688. No annual income as thepetitioner is pursuing Law from Symbiosis Law School Noida.

79. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.

80. Petitioner has no personal interests in filing this PIL.

81. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus with issue involved in this PIL.

82. Petitioner has not submitted representation and there is no other remedy available except approaching this Court under Article 32.

83. There is no personal gain private motive or oblique reasons in filing.

84. **Annex P-1:** Fathema Hussain Sayed Case [AIR 2003 Bom 75]

85. **Annex P-2:** M Venkata Subbarao[2004 SCC Online Mad 97]

86. **Annex P-3:** Regina (SB) Case [2006 UKHL 15]

87. **Annex P-4:** Fathima Thasneem [2018 SCC Online Ker 5267]

PRAYERS

Keeping in view the above stated facts and circumstances, the Court may be pleased to issue appropriate writ, order and/or direction to:

a) direct the Centre and States to strictly implement a*Common Dress Code* for staff and students in all the registered and recognized educational institutions in order to secure equality of status and social equalityand to promote fraternity dignity unity national integration;

b) direct the Centre to constitute a Judicial Commission or an Expert Committee to suggest steps to inculcate the values of social economic justice and socialism secularism and democracy and topromote fraternity dignity unity and national integrationamong the students;

c) alternatively, being custodian of the Constitution and protector of fundamental rights, direct the Law Commission of India to prepare a report suggestingsteps to secure social equality and to promote fraternity dignity unity and national integration within 3 months;

d) pass such other order/direction(s) as this Court deems fit and proper to secure social equality, assure dignity and promote fraternity, unity and national integration; and allow the cost to petitioner.

New Delhi Advocate for petitioner