

March 10, 2022

Where is the Rule of Law in Karnataka?

By: People's Union for Civil Liberties

PUCL Letter to the President on Rule of Law in Karnataka

PUCL Letter to the President on Rule of Law in Karnataka

Respected Sir,

We write to you from the Peoples Unions for Civil Liberties regarding the deteriorating state of the rule of law and attacks on the values of the Constitution in Karnataka ever since Basavaraj Bommai took over as the Chief Minister in July 2021. His administration has so far seen communal policing and hate crimes, attacks on churches, and prohibitions on the wearing of the hijab by Muslim women.

Within three months of coming to power the Chief Minister indicated his contempt for rule of law, when asked a question as to what he was doing to do about moral policing in Dakshina Kannada? He replied by stating:

There are many sentiments in the society. We should all behave in a manner that would not hurt these sentiments. When these sentiments are hurt, actions and reactions are elicited. Along with government's responsibility of maintaining law and order, we have to also ensure societal unity. For this, everyone should cooperate. The youth also should ensure the sentiments are not hurt. This is a societal issue. There has to be morality in society, right? When the morality is forgotten, action and reactions are elicited.

...

As the PUCL-K in its co-authored [report](#) noted, this statement showed 'the Chief Minister's tacit encouragement' to 'fundamentalist forces' which have been 'allowed to implement their Hindutva agenda unhindered by any notion of rule of law.' The PUCL-K concluded that 'For all those who believe in a constitutional democracy that India is, the Chief Minister's statement indicated that as far as he is concerned, Hindutva crimes will be condoned and the state sees their lawless actions as a legitimate expression of "social morality". Needless to say that the implicit encouragement to vigilante elements to take the law into their own hands has meant that today there is a 'social and political environment where such criminal acts are perpetrated with total impunity with no risk of penal or any other consequences. Rather, there is the guarantee of reward.'

This atmosphere of lawlessness found another flash point in attacks on the Christian places of worship which were intensified from September of 2021 PUCL-K in its report titled "[Criminalising practice of Faith](#)" has documented the pattern and causal factors responsible for the increasing number of incidents against the Christian community. We have noted acts of criminal intimidation, physical abuse and criminal trespass by religious extremists clearly violating the privacy, dignity and sense of equality that the minorities are entitled to practice, profess and propagate their faith as guaranteed under Article 25 of the Constitution. However, the Karnataka State Government has been a mute spectator and failed to initiate any steps to curtail the violence. PUCL-K in its report recommended that the state devise active measures to tackle the religious extremists responsible for the violence, but even as the Christian community was still reeling under the trauma of this violence, the State Government decided to bring forth an anti-conversion law during the Christmas season disrupting peace and harmony. In the analysis of the PUCL-K, the anti-conversion law is only a means to further target the Christian community's right to practice its faith using the bogey of 'conversion'. The Government in a shocking abdication of constitutional responsibility still refuses to act against those who perpetrate violent attacks on Christians pastors, Christian congregations as well as Christian places of worship.

...

The deteriorating situation of the rule of law was further exacerbated by the same religious extremists who worked to abet college going students to protest against the women wearing hijab by holding the institutions and the Muslim community to ransom in February of 2022. In shocking scenes captured by the media, once again the Karnataka government has been a mute spectator to scenes of college lecturers in a government college in Kundapura actively preventing Muslim girls from entering their colleges on the grounds

that they were wearing a hijab on 4 February 2022. This followed the equally arbitrary action by college authorities in a government college in Udupi preventing girls in hijabs from entering a classroom.

It should be noted that the ban on wearing the hijab was hastily, arbitrarily and without any notice implemented by the college authorities. The students are reported to say, “We are students, we have been wearing the hijab to college for so long, but it has become an issue only now.” The fact that the hijab has suddenly become an issue only hints at the mala fide and unconstitutional nature of the action, obviously undertaken under political pressures the college management was subjected to.

...

The Government instead choose to ignore this unconstitutional and arbitrary action by its own employees and abysmally failed to safeguard the rights of Muslim women students not to be discriminated against. It has instead issued a mischievous government order on 05.02.2022.

The notification issued by the Government makes the misleading point that the weight of Supreme Court and High Court precedents establishes that the ‘prohibition of a headscarf or a garment covering the head is not a violation of Article 25 of the constitution.’ This is a willfully wrong reading of the precedents which are really about balancing the right to hijab versus the right of colleges to prevent copying in exams as well as balancing the rights of a minority institution to prescribe its uniform versus the right of the Muslim women to wear the hijab.

The notification after its misleading citation of precedents goes on to wrongly conclude that the ‘prohibition of a headscarf or a garment covering the head is not a violation of Article 25 of the constitution’. It then goes on to state that in the event of no uniform being prescribed in government colleges, clothes should be worn which are ‘in the interests of unity, equality, and public order.’ It also empowers College Development Committees to decide what the uniform should be.

The Karnataka Government by this dangerous notification is doing indirectly what it seems shy of doing directly. Akin to a dog whistle to vigilante elements and the College Development Committees, it is telling them that as per the government, the wearing of the hijab is not protected under Article 25 and they are free to go ahead and prohibit the wearing of the hijab. This dog whistle has been heard by vigilante elements who have then decided to implement the government’s hidden but real intent.

...

When the government fails to fulfil its constitutional responsibility, it falls on citizens to then do so. Nobody has done so with more grace, dignity and courage than young Muslim girls who have asserted their right to education. The world saw Muskan a young Muslim woman B.Com student who drove a bike up to her college campus and walked fearlessly past a baying crowd of saffron shawl wearing bullies and cowards to get inside her college. Her courage, her spirit and her fearless and dignified assertion of her right to freedom of expression, right to education, and right not to be discriminated against was a demonstration of what the constitutional principles of liberty, equality and fraternity meant. We at PUCL salute her courage and know that her courage will be an inspiration to millions more.

The failure of the government was compounded by the failure of all other state institutions which have the responsibility to defend constitutional values be it the Karnataka Minorities Commission, the State Karnataka State Commission on Human Rights or the Karnataka Women’s Commission. In spite of repeated requests to act by the PUCL they have chosen to be strategically silent and implicitly supporting the state governments policy of abdicating what is a constitutional responsibility.

On 10 February, 2022, the three-judge bench of the High Court also failed to provide any relief to the aggrieved students. The court has literally suspended the operation of Article 25 of the Constitution across the state, seriously dampening the rights of the minorities. They have effectively nullified the prayer that the students sought. Such an approach tilts the balance of interest only in favour of the government and of the religious extremists while curtailing the rights of Muslim women to dignity, privacy, expression, education and religious expression.

It is in this situation of all-round failure of the state government to protect and defend the rights of Muslim women to education, dignity and expression that we have no option but to turn to the first citizen of India, namely the President of India. We at PUCL hope that when all other constitutional authorities have failed, he will be impelled to stand by his oath to ‘preserve protect and defend’ the Constitution of India and protect the rights guaranteed by the Constitution. We also hope against hope that the Union of India headed

by the Prime Minister will do their raj dharma and issue instructions to the government of Karnataka under Article 355 to ensure that governance is carried out according to the Constitution.

If these high constitutional authorities fail as well, then citizens will have to come forward to defend the Constitution. It's imperative that the defence of Constitutional values is not only by young Muslim women but also by a range of constitutional authorities who will support and defend their rights. In the event of total failure of all constitutional authorities it is up to civil society voices and the media to stand by these brave defenders of the Constitution, till such time as the constitutional conscience is awakened and the Karnataka government begins to act in accordance with the Constitution.

Adv. Arvind Narrain
President, PUCL Karnataka

Adv. Robin Christopher
General Secretary, PUCL – Karnataka

Prof. Rajendra YJ
National Secretary, PUCL

(Edited extracts from letter to the President from PUCL-Karnataka)

Letter to Chairperson, National Commission for Women

16 Feb 2022

Dear Respected Chairperson,

The Hon. High Court of Karnataka is currently considering whether public institutions can deny entry to women wearing hijabs. This petition concerns the continuing harassment of Muslim women students in Karnataka that in many instances could jeopardise their safety and dignity.

We urge the National Commission for Women (NCW) to exercise its powers and urgently take *suo moto* cognizance of reports of intimidation of Muslim women students based on religious attire. Women across all religions face patriarchal restrictions of one kind or the other. Certainly, we cannot condone such practices and we must work with men, women, and religious leaders to bring about change. But to single out one religious practice is not acceptable.

As you must be aware, evidence globally and from India shows that education is the most effective tool for women's empowerment and broader social development. The atmosphere of fear and intimidation will make parents hesitate to send daughters to schools and colleges. *Beti Bachao, Beti Padhao* will be an abject failure, not just for Muslim girls, but for girls across all communities. Failure of law and rule of intimidation affects everyone.

The NCW mission states that “ To strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution of specific problems/situations arising out of discrimination and atrocities against women.”

We entreat you to act upon your mission statement urgently.

Prof. Ritwik Banerjee
Prof. Deepak Malghan
Prof. Dalhia Mani
Prof. Prateek Raj
Prof. Hema Swaminathan

Indian Institute of Management Bangalore