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Love Jihad: Intrusion in the Private zone of Faith and Democracy

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The paper begins with the confluence of neutrality and fairness being elusive with the rising issue of Love-Jihad. The paper then progresses with the major turnout that happened in states after an ordinance promulgated by the Uttar Pradesh government as Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 was highlighted and adopted by several states which basically prohibits and punishes the conversion merely for the sake of marriage and vice versa. Additionally, the nature of offences under the aforesaid laws is cognizable and non-bailable. In spite of the practice being very prominent, what was unique was the role of the Judiciary with its landmark judgments in undermining the visual drawbacks of the legislation in breaching the fundamental rights of citizens. The paper questions the gradual erosion of fundamental rights guaranteed under our Constitution, the role of the state's interference, and the sanctity of personal laws which corroborate conversion to another religion.

Keywords: *jihad, faith, democracy.*

INTRODUCTION

Amidst the patchwork of macabre series of heart-wrenching incidents, lockdowns, pandemic, other barbaric crimes which corroborated the confluence of neutrality and fairness being elusive, commenced another controversial contemporary issue of “Love-Jihad” occupying major attention and coverage over all the of print and digital media. Religious conversion is a

century-old practice followed through all generations, however, through gradual descent in societal values, the term “love jihad” was coined around 2009, which apparently meant religious conversions for the fulfillment of a malafide agenda. The term gained popularity when the State of Uttar Pradesh promulgated a significant ordinance by the name of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, which prohibits the conversion just for the sake of marriage and vice versa, and makes offences under it cognizable and non-bailable.¹ The move was hailed and the said popularity spread across states like Madhya Pradesh and a few other states ruled by a common political party who widely corroborated that they shall join hands and shall oppose the love that leads to Jihad.² All major religions of the world have a humanist perspective that is to bolster up human rights despite the differences in the contents which is supported by findings of Pew Research Centre³ which stated that 80-85% of people believe in mutual respect and tolerance of all religions. However, 70% of Hindus and 80% Muslims don't believe in the former assertion and critically disallow and object to different community marriages.⁴ The law was basically to stop religious conversions just for the sake of marriage in spite of the open nature of the Special Marriage Act, 1954⁵ which allows interfaith marriages. These religious conversions in the name of marriage have been now considered as a serious impediment upon the health-survival of democracy which is predicated upon the endurance of a culture of truth.

OVERVIEW OF THE LEGISLATION

The fanatical appetite to take risks in the alleged whittling down of people's choice finds expression in the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, which later became the first ordinance to be promulgated particularly against love jihad followed by Madhya Pradesh. However, some States had already had the distinction to be able

¹ Hardik Gupta, 'Anti-love Jihad Laws' (*Ipleaders*, 11 April 2021) <<https://blog.ipleaders.in/anti-love-jihad-laws/>> accessed 11 April 2021

² *Ibid*

³ 'Religion in India: Tolerance and Segregation' (*Pew Research Centre*, 29 June 2021) <<https://www.pewforum.org/2021/06/29/religion-in-india-tolerance-and-segregation/>> accessed 16 September 2021

⁴ *Ibid*

⁵ Special Marriage Act, 1954

to identify the apparent injustice caused due to religious conversion affecting the sanctity of respective religions and had legal enactments in the form of Acts, like Orissa Freedom of Religion Act, 1967⁶; Madhya Pradesh Freedom of Religion Act, 1968⁷; Arunachal Pradesh Freedom of Religion Act, 1978⁸; Gujarat Freedom of Religion Act, 2003⁹; Himachal Pradesh Freedom of Religion Act, 2006¹⁰; Uttarakhand Freedom of Religion Act, 2018¹¹, etc.¹²

Laying special emphasis on The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020¹³, the following are its key provisions:

- The aforesaid legislation basically prohibits religious conversion not only on the basis of marriage but also the conversion which is done by fraud, misrepresentation, or undue influence.
- Any person related by blood to such a person can lodge a First Information Report (FIR) against the converter and the burden of proof to prove such conversion as legal would lie on the accused.
- The law equally applies to all religions and has no biases towards any religion specifically.
- The law puts a bar on any type of marriage which is for the “sole purpose” of religious conversion.
- All the crimes stated under this ordinance are cognizable and non-bailable and attract a penalty of a minimum of 1years imprisonment which may extend to 5 years for committing a crime stated under this Act along with a minimum fine of 15,000 rupees if the victim is a minor or a member of Scheduled Caste or Scheduled Tribes community the punishment range increases to minimum 2 years to max 10 years along with a fine of 25,000 rupees and if the crime involves mass conversion than the mass converter is

⁶ Orissa Freedom of Religion Act, 1967

⁷ Madhya Pradesh Freedom of Religion Act, 1968

⁸ Arunachal Pradesh Freedom of Religion Act, 1978

⁹ Gujarat Freedom of Religion Act, 2003

¹⁰ Himachal Pradesh Freedom of Religion Act, 2006

¹¹ Uttarakhand Freedom of Religion Act, 2018

¹² Hardik Gupta (n 1)

¹³ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020

liable to a minimum imprisonment of 3 years which may extend up to 10 years along with a minimum fine of 50,000 Rupees. For the victim of such crime, the court may under section 5(2)¹⁴ of the ordinance grant compensation extending to 5 lakh rupees along with the penalty received.

- Individuals wishing to convert and religious converters undertaking such conversions are required by the Ordinance to request an advance declaration of the intended religious conversion to the District Magistrate (DM).

The declarations as stated above must be given by a notice of:

- Individuals 60 days before the task.
- By the convertor one month prior to conversion.¹⁵

On receiving both declarations, the District Magistrate has to conduct a police inquiry into the intention, purpose, and cause of the proposed conversion.

JUDICIARY PLAYING ITS ROLE IN PROTECTING THE HEART OF CONSTITUTIONAL MORALITY

With the continuous fallout of the impact of the said legislation, Judiciary stood out as the barrier to cease its abuse when used with intention of belonging and affection under the ambit of fundamental rights guaranteed to each and every citizen of India under the Constitution of India with the following landmark judgments in protecting the freedom of choice and religion.

Strength of Constitution Halted in the Guarantee it Affords to Every Individual

The aftermath of the promulgation of the Act invited various controversies and challenges regarding the validity of the legislation and its conformation with the basic fundamental rights of religion, freedom, and privacy which our Constitution guarantees. The aforesaid law does not direct towards any particular religion or community. Therefore the right to equality cannot

¹⁴ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, s 5(2)

¹⁵ *Ibid*

be addressed here but the following landmark judgments suffice the contention as to how the erosion of basic rights cannot be normalized.

In the case of **Shafin Jahan v K.M. Ashokan & Ors**¹⁶, on being converted to Islam for marrying a Muslim man by Akhila Ashokan who is now Hadiya Jahan (after conversion) it was held by the Honorable Supreme Court that subject of freedom of choice should not be forgotten as it reiterated the strength of the Constitution which accepted plurality and diversity of different syncretic cultures by stating that Hadiya is at liberty to pursue her endeavors in accordance with her desires.

In the case of **Common Cause v Union of India**¹⁷, the Court held that the strength of the Constitution lies in the guarantee it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage.

In the case of **Justice K S Puttaswamy v Union of India**¹⁸, the Apex Court held that family, marriage, procreation, and sexual orientation are all integral and inherent to the dignity of an individual.

Gradual Erosion of Article 21 and Article 25 of the Indian Constitution Bodes No Good

A staunch denial of the right to marry as a fundamental right under Article 21¹⁹ of the Constitution and the freedom to choose religion under Article 25²⁰ of the Constitution is unlikely to bode any good to the prevailing situation. How far has the concept of a free and democratic country been implemented is well established through landmark judgments like:

In the landmark case of **Lata Singh v State of Uttar Pradesh**²¹, it was held that in a free and democratic country, once a person turns major, he/she can marry anyone he/she desires. Any

¹⁶ *Shafin Jahan v K.M. Ashokan & Ors* (2018)

¹⁷ *Common Cause v Union of India* AIR 2018 SC 1665

¹⁸ *Justice K S Puttaswamy v Union of India* (2012)

¹⁹ Constitution of India 1950, art. 21

²⁰ Constitution of India 1950, art. 25

²¹ *Lata Singh v State of Uttar Pradesh* (2006) 5 SCC 475

person having an objection to it can at best break social ties with the person but cannot incite any form of violence against the individual.

In another case of **Salamat Ansari v State of Uttar Pradesh**²², the Court held that every adult woman has a constitutional right to choose her husband. A matter of faith and code of ethical rules when included in the Constitution keeping in mind public order, morality and health was to enhance the power of “good” which every religion wants to teach in a land of diverse religions but manipulating the said thought at the behest of political supremacy or any other gain leads to the gradual erosion of the very concept of “right to religion”.

STATE’S INTERFERENCE IN THE FREEDOM IT IS SUPPOSED TO GUARANTEE

The restrictions bonafide to any encroachment of a person’s freedom guaranteed under Article 25 are public order, morality, and health. Apart from these restrictions, when a person’s basic right to marry or accept any religion willingly is halted, that somehow amounts to unnecessary interference and encroachment of law as justified by the Allahabad High Court while canceling a petition filed against Muslim man, Salamat Ansari, filed by his wife’s parents, Priyanka Kharwar (now Alia). Priyanka Kharwar had willingly converted to Islam last year to marry Salamat Ansari. The Allahabad High Court also said that it does not see Priyanka and Salamat as Hindu-Muslim but rather as two mature and grown-up individuals free to choose their personal relations.²³

BOLD DEFIANCE OF THE SANCTITY OF LEGISLATIONS

Normally, personal laws permit and prescribe regulations under whose ambit one can convert and re-convert to any religion one wants. But with the onset of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, the position of interfaith marriages confronts with unnecessary ambiguity whose definite recognition thus remains protected only by the Special Marriage Act, 1954. That adopting any religion is normalized by personal laws and arresting someone on conversion for marriage thus is mere hypocrisy.

²² *Salamat Ansari v State of Uttar Pradesh* (2020)

²³ *Ibid*

CONCLUSION

Though the paper mainly focuses on the side effects of the ordinance, however, the new law stood as the embodiment of a massive rescue source for many women who were at the receiving end of unwanted conversions through fraudulent and torturous means. In Uttar Pradesh, 14 cases related to love-jihad came into upfront whereby 13 involve Hindu women allegedly pressured to convert to Islam. In only two of the alleged cases the complainant is the woman concerned herself – in the remaining 12, the complainants are her relatives. In two of them, Hindu right-wing activists intervened, holding protests at the police station. In all cases but one, the woman involved is an adult. In eight cases, the couple is said to have been either friend or in a 'relationship'; while one couple claims to be married.²⁴ With the liberty to choose to be in jeopardy with the evolution of this legislation, the edicts under personal laws also get ignored. However, when used without malice, it served to rescue many as well. The confusion however remains in the use and sanctity of the legislation.

²⁴ Manish Sahu, '1 month of UP 'love jihad' law: 14 cases, 49 in jail, woman 'victim' complainant in only two UP 'love jihad' law: 13 cases involve alleged forcible conversion of Hindu women to Islam' (*The Indian Express*, 9 January 2021) <<https://indianexpress.com/article/india/love-jihad-law-up-police-7124001/>> accessed 03 February 2022