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The Allegation of Love Jihad and the Violation of Human Rights of Women with Special Reference to Media Trial

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The word 'Jihad' means struggle or effort, which connotes the struggle of human beings towards right, avoiding wrong. The term 'Love Jihad' predominantly connotes the inter-religious marriage between a Muslim man and a non-Muslim woman through the act of alluring and converting her to Islam, where the woman becomes prone to harassment socially and virtually, because of which her Right to Equality, Liberty, Privacy, and to have a Choice as a basic inalienable Human Right gets violated. Several allegations have emerged, and new laws have been framed against such alleged marriages; however, whether this allegation of Love-Jihad is a myth or reality is a matter of deep concern and the objective of the present study.

Keywords: *love jihad, marriage, human rights violation, media trial.*

INTRODUCTION

'Jihad' is an Arabic word which means struggle or effort. The exact meaning of the word Jihad is contextual, and in ethical as well as religious realms, it prima facie connotes the human struggle to promote what is right and prevent what is wrong.[1] A question arises

[1] Asma Afsaruddin, 'Jihad' (*Britannica*, 11 September 2026) <https://www.britannica.com/topic/jihad> accessed 12 September 2026

relating to adjoining the two completely different contextual words together in such a way, where they jointly mean something completely different to their very nature. It connotes love marriages between Muslim men and non-Muslim women, where it is alleged that Muslim men are enticing non-Muslim women in the name of love and converting them to Islam for the sake of marriage. This alleged kind of love marriage is completely different from the very nature of marriage. In love marriages, it is the marital knot between a man and a woman irrespective of their religion; however, in Love Jihad, it is alleged that Muslim men are marrying non-Muslim women more for their religious conversion rather than for the sake of affection.[2]

It has become an issue between Muslims and other religious communities like Hindu, Jains, Sikhs, and so on. A counter-argument in this regard states that the sole allegation is the result of Islamophobia and has nothing to do with intentional religious conversion. However, an investigation led by the National Investigation Agency (NIA) under the direction of the Supreme Court of India shows that out of 94 cases of love marriages between Muslim men and non-Muslim women, 23 cases (almost 25% of cases) are suspected of being instances of Love Jihad.[3] The data itself is self-evident of the allegation relating to Love Jihad.

THE ROLE OF MARRIAGE IN EXPANSION OF ISLAM

The origin of Islam can be traced back to 7th-century Saudi Arabia. The Prophet Muhammad (570-632 A.D.) introduced Islam in 610 A.D. after experiencing what he claimed to be an angelic visitation. Muhammad dictated the Qur'an, the holy book of Islam, which Muslims believe to be the pre-existent and perfect words of Allah.[4]

In Islam, marriage is an obligatory act, and Prophet Muhammad has stated that 'whoever chooses to follow my tradition must get married and produce offspring through marriage (and increase the population of Muslims), so that on the Day of Resurrection, I shall confront other Ummah (nations) with the (great) numbers of my Ummah.'[5] The Prophet stated:

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[2] S Gurumurthy, 'Love Jihad: Loving for Religion' *The New Indian Express* (27 November 2020) <https://www.newindianexpress.com/opinion/2020/Nov/26/love-jihad-loving-for-religion-2228125.html> accessed 17 August 2026

[3] Gurumurthy (n 2)

[4] 'Islam' (*History*, 05 January 2026) <https://www.history.com/articles/islam> accessed 17 August 2026

[5] Ayatollah Ibrahim Amini, 'The Purpose of Marriage in Islam' (*Islamic Insights*) <https://www.islamicinsights.com/religion/clergy-corner/the-purpose-of-marriage-in-islam.html> accessed 17 August 2026

'Whoever gets married has safeguarded half of his religion.'[6] The Prophet further stated, 'If I were to bestow all the good of both worlds upon a Muslim person, I would endow him with a humble heart, a tongue which continuously utters his praises, a body patient enough to withstand all calamities, and I would give him a pious spouse who, when she sees him, becomes happy, and protects his property and her own honour in his absence.'[7] All these words of the Prophet clearly show that according to Islam, the purpose of marriage is not only spiritual but also mundane in the context of raising the number of members of the community who are following Islam. The literal meaning of these words of Prophet Muhammad clearly shows the role of women in marriage, where she is the absolute counterpart of her husband, and in the absence of her husband, she has the duty to take care of the property and the family on her own.

Studies, including Islamic ones, show how love marriage has played, and continues to play, a significant part in expanding Islam. In a paper titled 'Demographic Islamization: Non-Muslims in Muslim Countries', Philippe Fargues explains how Islamic nations have been Islamising through love and marriage. Fargues concludes: 'Love was now playing the same role in the continuing process of Islamization that coercion played in the remote past.' Hassam Munir, an independent researcher of Islamic History based in Toronto, Canada, counters the view that Islam spread only through the sword. Munir says that domestically and internationally, inter-religious marriage was one of the most important methods in the expansion of Islam in non-Muslim territories. Munir writes: 'Intermarriage between Muslims and non-Muslims has been historically important for the spread of Islam in many contexts. This is an area of research that only recently has begun to receive attention, as most converts to Islam via this process were women.'[8]

Munir lists the countries to which Islam spread through love marriages. Conversion through intermarriage was important in establishing the early Muslim community in Spain; the early modern Ottoman Empire also offers many examples of intermarriage involving conversion; in British-ruled India, a huge number of Dalit women converted to Islam as part of intermarriage with Muslims. Munir adds that 'intermarriage has continued to play an important role in conversion to Islam in more recent times' and gives examples. In tune with

[6] *Ibid*
[7] *Ibid*
[8] Gurumurthy (n 2)

Fargues, Munir gives historical testimonies to show how marriage was the foundation of conversion of not just individuals but countries to Islam. Moreover, the very concept of inter-religion marriage in Islam is solely 'one-way traffic', as under Muslim Law only Muslim men are allowed to marry non-Muslim women, whereas Muslim women are not allowed to marry non-Muslim men. Thus, Muslim women are confined to this religion only, which may point towards the allegation of Love Jihad.

MUSLIM LAW RELATING TO MARRIAGE AND RELIGIOUS CONVERSION

For a Muslim marriage to be valid, there are certain essentials which have to be satisfied. Those essentials are as follows:

Civil Contract: A Muslim marriage is a civil contract between two parties where one party proposes and the other party accepts at one meeting.

Capacity of the Parties: The parties to the marriage must be competent to marry, i.e., the parties have to be of sound mind and have attained the age of puberty.

Free Consent: For the marriage to be valid, the parties must consent to the marriage without any coercion or force or fraud.

Prohibited Relationship: The parties to the marriage should not be within prohibited degrees of relationship, and the prohibition can be Absolute as well as Relative in nature.

The absolute prohibition renders a marriage void, whereas the relative prohibition renders a marriage irregular. The Absolute prohibition can be on the basis of Consanguinity, affinity, and Fosterage. It is noteworthy to mention that, under Muslim marriage, a man can have four wives at the same time, whereas a Muslim woman cannot have more than one husband.

Relative prohibition *viz.* absence of witnesses, having more than four wives, marriage during 'iddat' period, without the payment of 'maher or dower' or marriage with a member of a different religion renders a Muslim marriage not void but irregular.[9]

Muslims belonging to different schools may intermarry freely with another, and a mere difference of a school of Law like Shiite or Sunni, Hanafi or Shafi is immaterial. However, a

[9] Asaf AA Faizee, *Outlines of Auhammadan law* (4th edn, OUP 1999) 91-96

man in Hanafi Law may marry a Muslim woman or a Kitabiyya, but a Muslim woman cannot marry anyone except a Muslim. It is necessary to explain the term Kitabi and Kitabiya. The former refers to a man and the latter to a woman. A Kitabi is a man who believes in a revealed religion possessing a divine book, like Christians and Jews.[10] A Muslim, however, cannot marry a fire-worshipper, and a Muslim woman cannot even marry a Kitabi, except in India under the Special Marriage Act, 1954. The rule among the Shiites is stricter. A Shiite, whether male or female, cannot marry a non-Muslim.[11]

The question arises relating to the position of a marriage if it is prohibited on the ground of religion. Whether the marriage is void or irregular is a matter of debate. Amir Ali has argued that a Muslim may lawfully inter-marry a woman belonging to the Brahmo or Hindu sect. The Mughal Emperors of India frequently inter-married with Rajput Hindu ladies, and the issue of such unions were regarded as legitimate. Hence, he opined that such marriages are merely irregular but not void, as it does not affect the legitimacy of the offspring and an option of conversion to Islam remains open for the polytheistic Hindu woman. She at any time may convert herself to Islam and change the status of the marriage from Irregular to Regular.[12]

Mulla states that the marriage of a Muslim man with an idol worshipper or fire worshipper is irregular but not void. He adds further by saying that the marriage of a Muslim woman with a non-Muslim is only irregular, not void. However, the Koran gives a completely different view from that of Mulla, and according to it, the marriage of a Muslim woman with a non-Muslim man is *Batil,* i.e void. Hence, it can be stated that the reform in Muslim Law can take place in consonance with the opinion of Ameer Ali and Mulla only through proper legislation. It is noteworthy to mention that in India a Muslim man can marry a Jewish or Christian woman according to the tenets of Muhammadan Law.[13]

From the above discussion, the following inference can be drawn:

1. Muslim men are allowed to marry any non-Muslim woman, which does not affect the status of the marriage.

[10] *Ibid* 97
[11] *Ibid* 97-98
[12] *Ibid*
[13] *Ibid* 99

2. However, a Muslim woman cannot marry a non-Muslim man, not even a Kitabi, and if she does so, the marriage is regarded as *Batil* or void according to Muhammadan Law.
3. Hence, it is found that, under Muhammadan Law, men and women do not get equal liberty of choice in the question of marriage. Muslim men are allowed to marry any woman belonging to any religion, and there also remain chances of converting that woman into Islam so that the status of the marriage remains regular. On the other hand, there is a quest to keep Muslim women within the community, and hence, she is not getting the liberty to marry any man outside the Muslim sect.

These abovementioned inferences, somehow, may point towards the allegation of Love-Jihad, as through Love-Jihad, it is generally alleged that Muslim men entice non-Muslim women by showing love, affection and care, which leads non-Muslim women to get married to them and convert to Islam.

Under the ambit of other personal laws like the Hindu Marriage Act, 1955, it only considers the marriage between two Hindus. Under this act, inter-religious marriage cannot take place, and the same applies to Christian and Parsi personal laws. Under the Indian legal framework, inter-community marriage is possible only under the Special Marriage Act, 1954, which, without mentioning any particular religious community, states that a marriage between two persons may be solemnised under this Act[14], and to do so, it does not mention any religious conversion.

LOVE JIHAD: VICTIMIZATION OF WOMEN THROUGH MEDIA TRIAL

The allegation relating to Love Jihad has a resemblance to the crime of abduction and marriage for the sake of religious conversion. The matter relating to the elopement of non-Muslim women with Muslim men is not new to the 21st century, as has already been mentioned, and such incidents have existed long before the popularity of the term Love Jihad. It is noteworthy to mention that those women who used to convert during the 20th century were the women on the margins, like widows and Dalits. Delhi University historian Charu Gupta revealed through her research in 2002 that 'in 1927, a Hindu widow of Pratapgarh eloped with a Muslim, whom she married; in Banaras, a Chamar woman left

[14] Special Marriage Act 1954, s 4

her husband in favour of a Muslim man, a Jat woman married a Muslim in Agra after being converted in 1926; a sweeper woman of Purwah, Unnao married a Muslim and converted; A Kori woman, kept by a Muslim contractor at Banda, converted.'[15] All these marriages, as mentioned above, took place under the Muslim personal laws through conversion, which leads to the allegation of Love Jihad.

Allegations of Love Jihad first rose to national awareness in India during September 2009. Love Jihad was initially alleged to be conducted in Kerala and Mangalore in the coastal Karnataka region. According to the Kerala Catholic Bishops Council, by October 2009, up to 4,500 girls in Kerala had been targeted, whereas Hindu Janajagruti Samiti claimed that 30,000 girls had been converted in Karnataka alone. The Sikh Council received reports in 2014 that girls from British Sikh families were becoming victims of Love Jihad. Furthermore, these reports stated that these girls were being exploited by their husbands, some of whom afterwards abandoned them in Pakistan. According to the Takht Jathedar, 'The Sikh council has rescued some of the victims (girls) and brought them back to their parents.'[16]

This allegation of Love-Jihad has two different perspectives. One perspective focuses on society as a whole, which is concerned about the alleged trap set by Muslim men to entrap non-Muslim women and convert them to Islam, and the second perspective is concerned about the rights of those women who voluntarily choose to marry a Muslim man and get themselves converted to the Islamic religion. When the first perspective solely focuses on the preservation of their respective communities and the protection of women, the second perspective is concerned about the Rights of Women, their Privacy, Freedom, equality, and individuality, and under this patriarchal social set-up, the latter perspective becomes a matter of less importance than the former.

On the verge of the allegation of Love-Jihad, the woman concerned becomes highly vulnerable as she becomes the subject of public discussions and debate; the media is interested in covering her story, and her character also gets assassinated through

[15] Chandrima Banerjee, 'Ram Sene coined 'love jihad', but first 'case' goes back a century' *The Times of India* (19 October 2020) <https://timesofindia.indiatimes.com/india/ram-sene-coined-love-jihad-but-first-case-goes-back-a-century/articleshow/78744013.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 17 August 2026

[16] Gurumurthy (n 2)

cyberbullying. Through all this attention, the pivotal matter related to her Choice and Liberty gets suppressed.

One of the most important incidents relating to the same is found in Ashokan K.M. v Superintendent of Police[17], popularly known as the Hadiya Case. Hadiya (previously known as Akhila Ashokan) was a twenty-four-year-old lady and the only child of her parents Ashokan and Ponamma. She started a course in homoeopathy in Salem, Tamil Nadu, where she shared her room with two Muslim students. At some point, Ashokan (her father) filed a case in the Kerala High Court and alleged that the two roommates and their father had forcibly converted Akhila to Islam.

Akhila appeared before the court and stated that she had converted to Islam and changed her name to Hadiya on her own free will and wished to live away from her parents. The High Court allowed her to continue her studies and live as she wished. Next, Ashokan moved the Court, stating that his daughter was about to be whisked off to Syria and this time the High Court passed an immediate interim order restraining Hadiya from travelling abroad. The Court had further ordered her to move to the college hostel to complete her studies. When she was admitted to the college hostel, she came to the Court with a man whom she claimed was her legally wedded husband. She produced a marriage certificate which recorded that she had changed her name to Hadiya. Enraged by this assertion of Hadiya, the Kerala High Court refused to interact with her and passed an order, directing that she be held in incognito in a shelter home while her husband was to be thoroughly investigated.

The Kerala High Court ultimately declared the marriage of Hadiya to be null and void, and while doing so, the Court stated that it is necessary to keep in mind that Hadiya is a female in her twenties at a vulnerable age. As per Indian traditions, the custody of an unmarried daughter is with the parents until she is properly married. Even though she was an ordinary girl with moderate intellectual capacity, she was deemed to be gullible as she was first converted to Islam and then got married to a Muslim man. The custody of an unmarried daughter belongs to her parents.[18] The inference of the statement of the Kerala High Court was that the body and mind of the daughter are completely under the control of parents. The question arises whether an adult woman has the right over herself and her life. The Court

[17] *Asokan KM v The Superintendent of Police & Ors* (2017) 2 KLJ 974
[18] *Ibid*

noted that several cases were pending before it where women had been forcibly converted to Islam under undue influence or in the name of love. The Court further held that the marriage of Hadiya was not even a love marriage. This case was of an arranged marriage. After her conversion, her name was put on the website, and her husband came forward with the proposal of marriage; thus, this case was different from the normal case of inter-religious marriage.

The Court further stated that if a marriage was arranged by the parents of the girl, it was perfectly acceptable, but a marriage arranged by anyone else is not normal. Ms. Akhila is the only child of her parents, and there are no other persons in this world who would consider the welfare and wellbeing of their daughter to be of paramount importance than her parents. The Court here seemed to worry that the right of the parents to choose a husband for their daughter had been usurped by persons of a different religion. The strands of patriarchy, religious difference and paternalism (both of the parents and the Court) had created great hue and cry throughout the legal, social and political sphere.[19]

The matter was carried to *the Supreme Court of India,* which set aside the Judgment of the High Court annulling the marriage and directing Hadiya to remain in the custody of her parents. The Apex Court of India further held that the right to choose which faith to follow is a matter of individual autonomy. Equally, the right to choose a life partner is a freedom which is vested in every adult having a sound mind. Though the Supreme Court had overruled the decision of the Kerala High Court, it has to be noted that the Kerala High Court had ruled that Hadiya was incapable of taking decisions on her own. It is pivotal to draw attention towards the vulnerability of most of the young women in India who can barely afford to go to the police, the High Court, or the Supreme Court. In such situations, the judgment of the High Court should have been based on the principle of Justice, Equity and Good Conscience.[20]

The controversy relating to the Hadiya case existed for almost a year, and during this period the media, by exercising its Freedom of Speech and Expression guaranteed under the Constitution of India under Article 19 (1) (a), created a huge controversy relating to Love-Jihad. It completely took away the Right to Privacy, Freedom and Equality from the young

[19] Saurabh Kirpal, *Sex and the Supreme Court* (Hachette India 2020) 120-124
[20] *Ibid*

woman, Hadiya. Her character and life were continuously under surveillance, which vehemently violated her inalienable basic human rights.

Apart from this case of Hadiya, there are several allegations relating to Love Jihad in 2020 itself, which became viral through the media. Some of the cases are as follows:

- In August 2020, in Haryana, a 25 years old Hindu woman complained that she was targeted by a Muslim man named Nizamuddin, who concealed his identity to lure her to convert her religion to Islam before marrying and impregnating her. After marriage, her husband even tortured her, and finally, he, along with his parents, threw the pregnant woman out of the house.
- In August 2020, in Delhi, a case of Love Jihad came to light in the Kirari area of Delhi. We reported that the accused told the girl that he was a Hindu. He raped her for several months and took lakhs of rupees. It has been alleged that the accused forced her to convert and then get married to him. Later, he refused to take her to his home.
- In September 2020, in Haryana, a Hindu father lodged a kidnapping case after his daughter went missing. In the complaint, the girl's father said that the boy, who was a Muslim, had trapped his daughter. He said that the girl took cash and jewellery from her house at the behest of the Muslim youth.
- In September 2020, in Delhi, a case of Love Jihad became viral on social media. Here, two Muslim men, Khurshid and Ansari, tried to trap two Hindu sisters. After their identities were revealed and the girls refused to continue their relationship with the men, the latter beat up the family on the pretext of parking.
- In September 2020, in Madhya Pradesh, a Congress leader named Sikandar Khan posed as a Hindu to befriend a minor girl on Facebook. He then called her to his farmhouse, where he raped her and clicked objectionable pictures of her. The Congress leader, for the last three years, has been using the pictures to blackmail the girl and sexually exploit her. The victim, at last, approached the police and opened up against the Congress leader.[21]

[21] 'Menace of alleged Love Jihad spreading across India like wildfire: 20 cases reported from UP and other states in the last 2 months' (*OpIndia*, 17 September 2026) <https://www.opindia.com/2020/09/20-love-jihad-cases-reported-from-up-and-others-states-in-last-2-months/> accessed 17 September 2026

All these matters have been alleged and have been reported through the media (both online and offline), which caused a huge hue and cry all over the country and made these concerned women vulnerable to defamation as well as deprived of their basic Human Rights.

ETHICS RELATING TO MEDIA

The Indian media has a long history right from the British period. There were several legislations like the Indian Press Act, 1910 and the Indian Press Emergency Act, 1931. During the Second World War, the British Government imposed restrictions upon the press. However, in the post- independence era, the outlook towards the press changed. Article 19 (1) (a) of the Constitution of India proclaims Freedom of Speech and expression for all citizens; however, this freedom is not absolute and is subject to certain restrictions as mentioned under Article 19 (2) of the Constitution of India. Though the expression 'Media' is not included exclusively under Article 19 (1)(a, through judicial activism, the freedom of the media has become an integral part under Article 19(1)(a).

In Indian Press Newspapers v Union of India[22], the Supreme Court of India held that the press plays a very significant role in the democratic machinery and involves three essential elements as follows:

- Freedom to access all the sources of information,
- Freedom of publication, and
- Freedom of circulation.

As mentioned above, the freedom of the media is not absolute in nature, and Article 19 (2) of the Constitution of India imposes restrictions on the same. It states that the State has the absolute right to restrict freedom of expression of the media in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

In India, the media has played a significant role in the welfare of the country as well as made people aware. In several criminal cases like the Arushi murder case and the Jessica Lal murder case, the media has taken a pivotal role during the investigation. But there are ample

[22] *Indian Express Newspapers (Bombay) Private Ltd and Ors v Union of India & Ors* AIR 1986 SC 515

instances when the media acts most irresponsibly. For instance, the hype of the electronic media about the Abhishek-Aishwarya wedding, Virat-Anushka, Deepika-Ranveer wedding, Ranbir-Alia relationship, Taimur Ali Khan photos and news, the actual news of real importance gets neglected, and most importantly, this unnecessary attention violates the Right to Privacy of all the people, including celebrity children. The recent media hype about the suicide of Film Actor Sushant Singh Rajput is a perfect example of unnecessary media hype that violates the inalienable basic human rights of the people concerned along with their family. The media has created huge hue and cry relating to the allegation of Love-Jihad too, where it has continuously talked about several women and their families unnecessarily, which violates their fundamental rights to Freedom, Liberty, Equality, Privacy and above all their Reputation, which is an integral part of Human Rights.

RIGHTS OF WOMEN RELATING TO MARRIAGE UNDER THE INTERNATIONAL LEGAL REGIME

The Rights of Women became a subject of universal concern after the Second World War. The Preamble to the Charter of the United Nations, 1945, states that the United Nations determine to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.

The United Nations Charter, under Article 1, further states that to achieve international co-operation in solving international social, economic, political, cultural or humanitarian problems, it needs to promote and encourage respect for Human rights irrespective of race, sex, language or religion. Under Articles 13 and 55, the United Nations Charter reiterates the principle of Equality amongst race, caste, sex and religion, which primarily aims to wipe out discrimination amongst genders.

The principle of equal rights of men and women has been incorporated in the Universal Declaration of Human Rights, 1948 (UDHR). It states that all human beings are born free and equal in dignity[23], and everyone is entitled to all the rights and freedoms outlined in this

[23] Universal Declaration of Human Rights 1948, art 1

Declaration without any kind of distinction.[24] Through these Articles, the UDHR has affirmed the principles of non-discrimination between men and women and at the same time proclaimed the protection of the rights of women without any prejudice. However, even after these repeated universal proclamations, women around the world have been subjected to Discrimination as well as Violence through several activities like rape, domestic violence, sexual harassment at the workplace, gender discrimination, denial of equal opportunity, dignity, freedom; female foeticide, genital mutilation, and so on. The basic reason behind this discrimination against women is the stereotyped notion of the dominant hegemony, which reduces the status of a woman to that of a human being without dignity.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, defines 'Discrimination against Women' as any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[25] Similarly, 'Violence against Women' has also been defined under the United Nations Declaration on the Elimination of Violence against Women, 1993, which states that Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.[26] By defining Discrimination and Violence against Women, these international instruments made it clear that the States need to take adequate measures to stop violence against women and make the general public more aware of the general stereotypes against women, which work as discriminatory mechanisms against women in society.

Article 16 of the Universal Declaration of Human Rights (UDHR), 1948 states that State Parties need to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women- (1) Men and women of full age, without any limitation due to

[24] *Ibid* art 2
[25] Convention on the Elimination of All Forms of Discrimination against Women 1981, art 1
[26] UN Declaration on the Elimination of Violence against Women 1993, art 1

race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The International Covenant on Civil and Political Rights (ICCPR) 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, under Article 1, state that all people have the right to self-determination, i.e they have the right to freely determine their civil, political, social, economic and cultural status. Article 23 of ICCPR explicitly declares that every family is entitled to protection by the society and by the State, and every man and woman existing therein has the right to marry with free consent and make a family. Thus, these instruments expressly declare the equal rights of man and woman to marry any person and make a family freely without any coercion or force.

INDIAN LEGAL FRAMEWORK AND THE RIGHTS OF WOMEN RELATING TO MARRIAGE

Part III of the Constitution of India under Article 14 states that the State shall not deny to any person equality before law and equal protection of law. This Article, being inclusive in nature, includes men, women, children and even people of the third gender. Article 15 of the Constitution of India declares that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 19 (1) (a) states that all citizens shall have the freedom of speech and expression, which includes the freedom of speech and expression of men, women and also of the third gender relating to their choice of marriage or sexual orientation.[27] Article 21 of the Constitution of India declares that no person shall be deprived of the Right to Life and Personal Liberty, except according to the procedure established by law. This Right to Life and Personal Liberty includes the liberty to choose the life partner irrespective of any race, caste, religion or sexual orientation.[28] The Supreme Court of India in Hadiya's case[29] stated that an adult woman has the right to choose

[27] *Navtej Singh Johar and Ors v Union of India Th Ministry of Law and Justice* AIR 2018 SC 4321
[28] *Ibid*
[29] *Shafin Jahan v Asokan KM and Ors* AIRONLINE 2018 SC 1136

her life partner and, at the same time, she has the very right to choose which faith to follow and nobody (not even her parents) has the right to exercise her Right to Liberty in that matter.

The Supreme Court, even in the matter of inter-caste marriage, reiterated the same view. In Lata Singh v State of Uttar Pradesh,[30] the Supreme Court stated that the right to marry is an essential component of the right to life under Article 21 of the Constitution of India. Here the court observed that: 'This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste marriage, the maximum they can do is cut off social relations with the son or daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste marriage.' Even criticising honour killing in Arumugam Servai v State of Tamil Nadu,[31] the Supreme Court, through judicial interpretation, stated that there is nothing honourable in Honour Killing and those who engage in such heinous criminal activity are nothing but murderers and deserve harsh punishment, and only in this way can this barbarism be prevented.

Apart from the Constitutional legal framework in India and the judicial interpretation, the personal laws relating to marriage also talk about the 'free consent' relating to marriage. The Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 include the clause relating to 'free consent' as an essential factor relating to the validity of marriage. Even Muslim personal law also talks about free consent as a factor relating to the validity of marriage. But in matters relating to social practices and norms existing there, the people most of the time follow the customs and practices without giving due respect to Article 13[32].

However, in November 2020, the State Government of Uttar Pradesh promulgated an Ordinance titled the Prohibition of Unlawful Religious Conversion Ordinance, 2020, which prohibits 'religious conversion for marriage' by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means.[33] It further states that whoever tries to convert one person from one religion to another shall be punished with imprisonment for a term which shall not be less than one year and may extend to five years and shall also be liable to a fine which shall not be less than fifteen thousand rupees. If anyone tries to convert

[30] *Lata Singh v State of Uttar Pradesh and Anr* AIR 2006 SC 2522
[31] *Arumugam Servai v State of Tamil Nadu* (2011) 6 SCC 405
[32] Constitution of India 1950, art 13
[33] Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance 2020, s 3

any minor, a woman or a person belonging to a Scheduled Caste or Scheduled Tribe, shall be punished with imprisonment for a term which shall not be less than two years and may extend to ten years and shall also be liable to a fine which shall not be less than twenty-five thousand rupees. If anybody engages in mass conversion, then that person shall be punished with imprisonment for a term which shall not be less than three years and may extend to ten years and shall also be liable to a fine which shall not be less than fifty thousand rupees.[34]

The Ordinance explicitly states that any marriage done solely for unlawful religious conversion shall be declared void by the Court of Law[35], and if anybody wishes to convert his/her religion, then that person needs to give a declaration to the District Magistrate or Additional District Magistrate that he/she wants to convert his/her religion with free consent and without any coercion.[36] The District Magistrate or Additional District Magistrate, after receiving such declaration of conversion, shall conduct an enquiry through the police to know the real reason behind the conversion, and if satisfied, only then such conversion can be permitted.[37]

This Ordinance of the State Government of Uttar Pradesh created a great hue and cry on the mind of public-spirited citizens of the country, as with this legislation, this State took away the individuality from its citizens and intruded into the utmost personal sphere of human life and privacy. Debate arose relating to the constitutional validity of such Ordinance, as it was passed in such a hasty manner, without any exact proof of urgency and also without any debate and discussion in the legislature.[38] Several eminent lawyers have urged the Supreme Court to declare this Ordinance as Unconstitutional for being in absolute contradiction to the Right to Privacy and the Right to Religion as proclaimed under Article 25 of the Constitution of India.

CONCLUSION AND SUGGESTION

If dignity and autonomy are the pillars of the Constitution, then there is no greater manifestation than the right to choose a sexual partner, and nothing is a greater expression of that choice than marriage. Both the right to choose a partner and the right to marry

[34] *Ibid* s 5
[35] *Ibid* s 6
[36] *Ibid* s 8
[37] *Ibid*
[38] *Rustom Cavasjee Cooper v Union of India* AIR 1970 SC 564

(irrespective of race, caste, sex and religion) are two intensely personal choices over which the State and society ought to have no control. Even the Supreme Court of India, through judicial activism, has repeatedly upheld the individual freedom relating to marriage and the liberty in choosing a life partner. However, the reality is completely different, and these choices have rarely been free- both historically and in contemporary times. The right to choose a partner is often pitted against caste, community and religious claims. There exists an innate tension between personal autonomy and dignity, and the usage, customs and practices of the community.[39]

The very allegation of Love-Jihad is being raised in the Indian community, because of which inter-religious marriage between Muslim men and non-Muslim women has become a matter of concern. This particular kind of marriage involves the religious conversion of the non-Muslim women to Islam. The legal reason behind this conversion is that Indian marriages are mostly governed by personal laws where marriage can take place only between two persons belonging to the same religion. In case of inter-religion marriage, people need to get married under the Special Marriage Act, 1954. The said Act requires the parties to the marriage to give notice in writing to the Marriage Officer of the District, which is to be placed in the Marriage Notice Book and open for public inspection.[40] Now, inter-religious and inter-caste marriages being taboo in Indian society, giving notice for marriage under the Special Marriage Act, 1954 subjects them to harassment, including the violation of their Fundamental Right to Privacy and Safety.

In such situations, they take refuge in Muslim personal law, which allows a Muslim man to marry any non-Muslim woman. Under Muslim Law, the marriage between a Muslim man and a non-Muslim woman is irregular, and the religious conversion of the woman remains the only option to make the marriage regular.

The allegation relating to Love-Jihad arises on this note, as a Muslim woman is not allowed to marry any non-Muslim man; thus, the Muslim woman remains within the community of Islam, and the non-Islamic community started taking it as a threat to their society and started alleging intentional conversion of non-Muslim women into Islam through undue influence

[39] Kirpal (n 19)
[40] Special Marriage Act 1954, ss 5, 6

or force. However, no data has yet been found that can prove the allegation relating to Love-Jihad.

To conclude, it will be appropriate to say that in a country like India, where the majority of women are uneducated, discriminated against, unaware, disrespected and suffering from denial of dignity, in such a situation, it is very easy to use any kind of force or alluring machinery against them and entrap them into wedlock in the name of love. The data show that mostly the women on the margins, like Dalits and widows, convert their religion and enter into wedlock with Muslim men. To stop this kind of conversion of religion by non-Muslim women, there should be a paradigm shift from a men-centric society to an egalitarian social structure. Then and only then can women attain a status where they cannot be influenced or lured by the desire for love and respect.