
UP LOVE JIHAD LAW: A CURE WORSE THAN THE DISEASE ITSELF

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ABSTRACT

Since the introduction of the term Love Jihad in political sphere by right wing political forces, the Anti Conversion laws such as the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 along with many more similar laws in other states have been in controversy. This research paper seeks to answer the question as to whether the society needs the Anti Conversion laws or do we have enough legal ammunition to deal with the issue. The introduction of a new law has some pros and some cons, but which outcome outshines the other ultimately decides the utility of the law and forces the people to either adjust with the new change or throw away the law. In this paper, the researcher attempts to layout the utility of this law and tries to find out whether it does more harm than good.

Keywords: Love Jihad, Anti Conversion law, Uttar Pradesh, Fundamental Rights, Right to Privacy

1. A BRIEF INTRODUCTION TO THE ISSUE:

The appropriate name of the Law is ‘Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021’, but due to political reasons, it is more famous as ‘*Love Jihad*’ Law which criminalizes religious conversion by “force, undue influence, coercion, or allurement”. The Act includes within its ambit marriage for the sake of religious conversion. Under the law, a marriage will be declared ‘null and void’ if the conversion is solely for that purpose, and those wishing to change their religion after marriage need to apply to the district magistrate in advance.

It primarily aims at preventing and prohibiting forced conversion of Hindu girls of marriageable age to Islam for the purpose of marrying a Muslim boy because of an alleged Islamic conspiracy of wooing Hindu Girls and in effect strengthening Islamic population in India, hence the name ‘*Love Jihad*’. The above law is mainly the result of efforts of the ruling party in the centre and various states.

In December 2020, for instance, a Muslim man in Moradabad was arrested along with his brothers under the anti-conversion law. His Hindu wife suffered a miscarriage after five days of alleged torture at the *Nari Niketan*, and had told media that *Bajrang Dal* activists had “dragged” her husband and her to the police station. The man and his brother, who was also arrested, were subsequently released.¹ Also in the famous ‘*Hadiya case*’, the investigation of which went through one of the top executive department NIA and before the Apex Judicial office of the Country, the Supreme Court, none of the claims of a forced conversion could be proven by the prosecuting agencies.²

People supporting legislation felt the need of such a law as a way of countering the alleged Islamic Conspiracy of ‘*Love Jihad*’. Some are using it as political tool for polarization however; some might support it in fear of protecting their heritage, their children’s future.

2. CURRENT LOVE JIHAD LAWS:

Himachal Pradesh³, Uttarakhand⁴, Madhya Pradesh⁵, Uttar Pradesh⁶ along with many more BJP

¹ Rashid-Pinki (First Couple Who Were Arrested Under This Controversial U.P. Law)

² Shafin Jahan V. Km Ashokan, 2018

³ Freedom Of Religion Act, 2019 (Act 13 Of 2019)

⁴ The Uttarakhand Freedom Of Religion Act, 2018 (Act 28 Of 2018)

⁵ Madhya Pradesh Freedom Of Religion Ordinance, 2020

⁶ Uttar Pradesh Prohibition Of Unlawful Conversion Of Religion Act, 2021 (Act 3 Of 2021)

ruled State have such laws in place. The Uttar Pradesh law in this regard provides that '*No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage*'⁷ and any '*Aggrieved person, his/her parents, brother, sister or any other person who is related to him/her by blood, marriage or adoption may lodge a FIR of such conversion*'⁸.

The provisions of the Act 3 of 2021 make contravention of section 3 punishable up to 10 year if the person being converted is a woman under section 5. Moreover, the Act classifies such offence as cognizable and non-bailable⁹.

2.1: It's used as a tool of harassment: In a country like India, where police investigations and judicial trials take such a long time, the common man fears the process more than the penalty. Making such conduct covering innocent conversions within its ambit, giving relatives, of the parties willing to marry, a locus standi to file a First Information Report and making the offence Cognizable and Non-Bailable, the govt. just gave the people who don't have a say in a consensual marriage between two adults, a free pass to harass them and enter into their private life in gross violation of their Fundamental Right to Privacy¹⁰.

2.2: Fundamental Rights: By making a private matter of religion and marriage, public/punishable through the force of law, the Fundamental Rights in the line of fire are primarily Freedom of expressing oneself under Art. 19(1)(a), people are forced to give a 60 days' notice¹¹ declaring their intention to convert their religion, failing which a maximum punishment of 3 years is prescribed¹². After the '*Adhaar Judgment*'¹³, an individual's right to privacy, right to marry, right to live a dignified life with choice under Art. 21 are simultaneously under attack. In addition, the primary fundamental right to practice and profess any religion is also under state's unreasonable scrutiny. Art. 25 coupled with Art. 19(1)(a) & Art. 21 gives the individual a right of conversion to another faith.

3. DO WE NEED LOVE JIHAD LAWS:

⁷ Sec 3, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

⁸ Sec 4, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

⁹ Sec 7, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

¹⁰ AIR 2017 SC 4161

¹¹ Sec 8(1), Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

¹² Sec 8(5), Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

¹³ AIR 2017 SC 4161

In veil of preventing forced conversion, the law is almost in all cases is being misused ending up in creating a political turmoil and religious polarization. By not having proper evidence that supports the claim of a forced conversion coming directly from the alleged victim or through someone else with the alleged victim's previous approval, the police often due to the offence being classified as cognizable¹⁴ first arrest the parties, proceeds with the criminal investigation and then at last, decides to find out whether the conversion was driven by force or free will?

This leads to grave violation of guaranteed Fundamental rights which we cherish such as Art. 19 (Freedom to express yourself), Art. 21 (Right to Live a dignified life with liberty, Right to Privacy, Right to Choice, Right to Marry) & Art. 25 (Freedom of Conscience and practicing any religion). Do we really need these laws that aim at 'A' and shoot at 'B'?

'In case of *Pinki-Rashid*, the first Moradabad couple whose fundamental rights were grossly violated who allegedly even lost their child because of the system's harassment' or 'the NIA investigation in Hadiya case, along with a plethora of other victims of these laws, no element of coercion was found. These laws make it mandatory to give a two month notice prior to such conversion for the purpose of marriage similar to the provision in case of Special Marriage Act of 1954, which is in violation of guaranteed Right to Privacy of both parties to the marriage, because it forces them to public their intention of marriage, opening up a horde of opposition from different people for reasons that don't hold merit in the eyes of law such as caste barriers, religion barriers, simply not liking the spousal choice of the party by their parents or relative along with all others who are simply prejudiced against such conversions due to political affiliations. In that regard **Allahabad High Court**¹⁵ observed through Justice Vivek Chaudahry *that if provisions on publication of the notice are held as mandatory, then "they would invade in the fundamental rights of liberty and privacy, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned"*.

All that is required for the law to accept and recognize the marriage is only them being adults and giving free consent and that doesn't need a notice to be given to the public. In cases of bigamy also, the law is equipped to declare subsequent marriage null and void if evidence of previous marriage is placed before the authorities. We should not forget that the Supreme Court's ruling in *Sarla Mughdal v. UOI*¹⁶ which imposed prohibition on conversion for the

¹⁴ Sec 7, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)

¹⁵ Smt. Safiya Sultana Thru. Husband Abhishek Kumar Pandey v. State Of UP, All HC, 2021

¹⁶ AIR 1995 SC 1531

purposes of a second marriage was not because the person is merely converting for the purpose of marriage but because the *hindu male* was already married to another *hindu female* and tried to convert and remarry without dissolving the previous marriage. So those facts don't apply to the one in dispute where a single party wants to marry another single party of another religion by converting, and this Act is even making those cases an offence.

In those cases where the consent for marriage is polluted, then also the law is equipped to provide remedies, additionally the law has already existing penal provisions for kidnapping, abducting or inducing a women with the intention of compelling her for marriage punishable up to 10 years and fine¹⁷, but in hope of preventing such instances by this Anti Conversion law, the damage to the fundamental rights outweighs the objective the law seeks to achieve.

To sum up, the cons of such a law are far greater than the mirage it projects as pros.

4. CHALLENGING THE LOVE JIHAD LAW:

The Apex Court has ruled that provision that *suffers from vagueness and over breadth is invalid*¹⁸ and the term 'allurement' under sec. 3 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 does suffer from that vagueness by taking within its purview even the innocent cases, and arguably that is what the system has been doing in almost every concerned case since the inception of this law in 2020 via the ordinance.

Earlier, when a similar law of M.P. Freedom of Religion Act, 1968 was challenged in 1977 before the Supreme Court in *Rev. Stainislaus vs State Of Madhya Pradesh & Ors*¹⁹, the Apex Court upheld its validity, but keep in mind that it happened prior to the 9 Judge bench 'Privacy Judgment' of the Supreme Court in 2017²⁰ where the court held that Right to Privacy is also part of the Right to life and personal liberty under Art. 21.

With Supreme Court rulings like *Shreya Singhal v. UOI* and *K.S. Puttaswamy v. UOI* in 2015 and 2017 respectively, these laws need a fresh review by the Hon'ble Supreme Court keeping in mind that it is the guardian and protector of the Fundamental rights of individual.

¹⁷ Sec. 366, Indian Penal Code, 1860

¹⁸ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

¹⁹ 1977 AIR 908

²⁰ *K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161

5. CONCLUSION:

The state has no right to enter our thoughts, our bedrooms, and other aspects of private domain. Through these laws, it seems superficially that the state is not directly trying to enter our privacy since these ‘anti forced conversion laws’ don’t prevent voluntary conversion but only prevent those conversions where the consent is polluted. But use of terms like ‘*Allurement*’ u/s 3 of the Act 3 Of 2021²¹ takes into its ambit even those cases where the consent has been obtained by power of persuasion/emotional connection rather than by force or fraud. We can all agree that making someone change their religion by use of misrepresentation, force, undue influence, coercion, or by any fraudulent means is indisputably wrong.

Additionally, making the offence cognizable under sec. 7 of the Act empowers the police to just arrest and initiate criminal proceedings irrespective of whether the consent was free or polluted and then on top of that the offence being non bailable, the accused can’t even get bail as a matter of right rather left upon the discretion of courts and prosecuting agencies. Till now, there hasn’t been a single case where the prosecution could substantiate the charges with evidence but hundreds of cases where parties wanting to marry inter-religion have been brutally harassed in complete disregard to their rights.

This law aims to achieve something that can be dealt with the already existing laws without cooking up a communal issue on national level. It violates various guaranteed rights from the stage of pre-FIR to post-FIR which are considered as soul of the Constitution by the Hon’ble Supreme Court by obligating individual consenting adults to give a public notice, then being named in FIR on the request of dissenting family members, then getting arrested without permission of magistrate and then making it hard to even get bail. The only object this law seems to achieve is Political polarization; on the cost of violation of individual rights.

²¹ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 Of 2021)