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With this thought, we hereby present to you

LawPublicus The Legal Portal

**“LOVE JIHAD LAW – A
THREAT TO SECULARISM”**

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LOVE JIHAD LAW – A THREAT TO SECULARISM

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ABSTRACT

Love jihad is said to be an Islamic conspiracy theory. It alleges Muslim men's saying that they convert women's from non-Muslim community to Islamic communities. But recently, this has become a turmoil after the new anti-conversion law passed by the state of Uttar Pradesh and later several other states like Madhya Pradesh, Assam, Karnataka and Haryana which are planning to bring laws against 'love jihad'. A country like India in the 21st century is still dealing with religion as though it was meant to develop one's relationship with the state. The people across the country made this a huge issue that they even ended up boycotting several advertisements and wanted to boycott some entertainment platforms. This article will deal with several issues regarding the new law. It will always deal with understanding the term 'secularism' connecting with the new law. It will discuss the case of Shafin Jahan V K. M. Ashokan, Shaban Sha V State of Kerala. Also this article will connect the landmark judgment of K.S Puttuswami V Union of India.

INTRODUCTION

Love jihad is said to be a conspiracy. India don't have a huge list of cases regarding this issue, but just after a month of the new anti-conversion law, more than 40 cases are being registered. It is claimed that the Muslim boy brainwashes the Hindu girl, or forcefully convert her into Islam. There were many further issues and questions raised against this law. Different states have some forceful conversion laws. But the issues were raised after Uttar Pradesh's new Prohibition of Unlawful Conversion of Religion Ordinance, 2020. It not only interferes with a range of fundamental rights, such as the right to choose, right to privacy and freedom of religion, it can potentially become a tool for violence against interfaith couples and minorities. The CM of Uttar Pradesh, Yogi Adityanath has also mentioned this issue before the election and it finally became a law in the recent past. Some people call this the Hindu right-wing theory. After the Citizenship Amendment Act, again the Muslims in his country are not favoured. But in this law, not only Muslims but women from other

communities will also suffer in the name of love. Until the new law came, love jihad was not recognised by any of the legal systems of the country. It was authored by Sangh parivar outfits to portray an imaginary Muslim conspiracy to convert unsuspecting Hindu women to Islam. As indicated by the new law, if an individual expects to change over to another religion, the person should serve a 60-day notice to the district magistrate. The judge will at that point do enquirers to check whether the transformation is consensual or blackmail or deceit is involved. This likewise doesn't have any significant bearing to the Special Marriage Act. Individuals of various confidence who wish to marry each other can in any case follow due strategy under the Special Marriage Act.

ORIGIN OF “LOVE JIHAD”

It was noted that several states in the past, especially tribal populations, have passed laws regarding forceful conversion. Orissa was the first state to pass a law against religious conversion. Madhya Pradesh followed its own anti conversion law, and also Arunachal Pradesh in. This way many other states had enacted such kinds of law which were actually meant to help citizens of the country. The idea of 'love jihad' came up because of a rumour in 1927 from the city of Uttar Pradesh that a Hindu woman was converted into Islam to marry a Muslim man. In the 20th century several Hindu reforms were talking about how Hindu women are converted into Muslims. This got more serious day by day as people started claiming that Muslims are taking away Hindu girls. By 2006, in Kerala, it was alleged that Muslim's men now started to convert into Muslims. Almost 447 girls were said to be converted. Then Congress CM in Kerala, Oommen Chandy, admitted in the assembly that between 2006-2012, 2,667 women from other faiths had been converted to Islam because they married Muslim men. The issue became more serious when a Christian girl, who was the converted into Islam was arrested give sim cards to Lakshar-e-taiba operatives.

SECULARISM AND THE NEW LAW

In India, secularism means that India is a country that supports or participates in a neutral way when it comes about religion. The country does not have any religion of its own. When there is any law passed or any issues, the state should always make sure that it is not biased towards any religion. No harm or no favour but equal. With the Forty-second Amendment of the Constitution of India authorized in 1976, the Preamble to the Constitution attested that India is a secular nation.

However, the Supreme Court of India in *S. R. Bommai v. Union of India* set up the way that India was secular since the development of the republic. The judgment set up that there is partition of state and religion. It is expressed in issues of State, religion has no space. What's more, if the Constitution requires the State to be common in idea and activity, a similar prerequisite connects to ideological groups too. The Constitution doesn't remember, it doesn't allow, blending religion and State power. That is the sacred order. None can say something else in as much as this Constitution oversees this country. Legislative issues and religion can't be blended. Any State government which seeks after non-secular strategies or non-secular game-plan acts in opposition to the protected order and delivers itself amiable to activity under Article 356". Freedom of religion in India is a fundamental right guaranteed by Article 25-28 of the Constitution of India. This means any law or ordinance which affects the religion or questions the religion is void. Now, it is clear that the love jihad law, not only violates the rights but also creates threat to the country's secularism.

RECENT CASES AND ARREST

Critics call this law as regressive and offensive because these kinds of laws can be used to misuse and harassment as such things like love jihad is not even recognised by Indian law but it is just a term used by some radical Hindu groups. This becomes even more of an issue after a popular jewellery brand was forced to withdraw their advice as these right-winged Hindus claimed that they are promoting love jihad. Again, in another case they alleged a Netflix show, suitable boy as it was said that it hurts their sentiments. In Uttar Pradesh after the promulgation of the anti-conversion ordinance, 2886 peoples have been named in FIRs and 54 were arrested and 85 were booked. In Lucknow just after the enactment of the ordinance the police violently halted a wedding ceremony. Even though both the parents were present there and everyone claimed that there were no issues like conversion. Even after this the marriage was prevented. In another case, the father of the girl complained that her friend was trying to convert her. While they both were returning from a birthday party, a mob attacked them also with some local people and the boy was charged under serious cases including POCSO. In another one, a Muslim man was sent to jail blaming him that he tried converting a woman. The woman is married and the man claims that he doesn't have any link with the women. Again, a Hindu woman, went to register for marriage with her Muslim husband but he ended up in jail. Even though all these cases repeatedly show that it is actually targeting Muslim

men in our country, the leaders don't accept this and keep on shutting up mouths of every person who says this is biased claiming that it is targeting every religion of country even thou it's not.

WHAT'S WRONG WITH THE ORDINANCE?

Firstly, the law makes it a criminal offense for an individual to change over another by intimidation, distortion, extortion and so forth, which is unobjectionable. A marriage solemnized for the "sole reason" of unlawfully changing over the lady or the man of the hour is needed to be pronounced void by the equipped court. An individual who wishes to change over to another religion (counting to Hinduism) presently needs to follow a fairly bulky cycle — giving a revelation to the region justice, both when the transformation, and exposing oneself to an enquiry by the magistrate. Forcible conversion is no conversion”, Sardar Vallabhbhai Patel had said in one of the sub-committees of the assembly, adding, “we won't recognise it.” However, the UP ordinance goes beyond this principle and does something quite strange. The question which is being asked is ‘What is the requirement for such a law?’ Regardless of numerous examinations, there is no proof that focuses on the presence of such a connivance. Furthermore, offenses, for example, constrained transformation and relationships under misrepresentations are now deserving of law in the Indian legal framework. This piece of enactment plans to do is cause the Muslim people group to feel like outcasts in their own country. A Love Jihad law sanctioned in Himachal Pradesh a year ago denied the utilization of affectations or power for strict change, characterizing prompting as all enticements as material endowments, free instruction in a rumoured establishment run by a strict body, better way of life, and heavenly delight. What is generally incredible about this law is that most people just proselyte their religions for more prominent heavenly joy. Secondly, The new law has been brought through an ordinance. Under the Indian Constitution, ordinances are extraordinary powers given to the chief to sanction a law in conditions requiring prompt activity, bypassing Parliament or state authoritative gatherings. It isn't clear how a statute was proclaimed when the proof of presence of 'love jihad' itself is under inquiry.

VIOLATED ARTICLES UNDER THE NEW LAW

The ordinance violates various articles of the Indian constitution. Our equality ensures in the Constitution that all people have equal protection or security of the law under Article 14. This goes along with the assurance of non-discrimination under Article 15 which commands that the state will not victimize any citizen on grounds just of religion, race, caste, sex, place of birth or any of them. Forcing such limitations on marriage just on the ground of religion adds up to separation and an infringement of the right to equality. It also violates article 21 and 25. Article 21 The provisions of the Act and ordinance enable the state "to suppress a person's very own freedom" and henceforth violates Article 21 of the Indian constitution. Both the Act and the ordinance were introduced on "conspiracy theory" and accepted that all transformations were as a rule illicitly constrained upon people who may have accomplished the period of dominant part i.e, majority. It orders that a progression of convoluted techniques be followed when transformation, bringing the State into certainty to "guarantee" that the demonstration was a voluntary and deliberate choice by the person. These arrangements in both the denounced Act and Ordinance place a weight on people to legitimize their own choices for State endorsement. Ordinance places a burden on individuals to justify their personal decisions Article 25 The right to conscience is enshrined in Article 25 of the Constitution along with the right to profess, practice and propagate religion⁷. Given that India is a secular country, these rights apply to people of all religions similarly. As indicated by the courts, the privilege to conscience, small voice and religion likewise implies that one individual's strict rights can't encroach upon the privilege of another. The right to conscience has also been framed independent of the right to religion. This means one can be non-religious and exercise the right to conscience, which according to the dictionary meaning involves "a knowledge or sense of right or wrong, moral judgement that opposes the violation of previously recognised ethical principles and that leads to feelings of guilt if one violates such principles". Along these lines, a person's activity of heart can't be limited just on the grounds that it doesn't adjust to the morals and ethics set by a religion. On the off chance that an individual feels a strict rule is violating their moral convictions, and if the person's moral convictions are not disregarding laws or are in the way of confining the activity of someone else's privileges, the right to conscience can't be surrounded.

HADIYA CASE

This case was often highlighted as the 'love jihad case'. The rights of women to marry against the wishes of their parents were also being questioned in the case. There were some arguments and allegations presented by the father of Hadiya that made the case more complex as he alleged that Shafin Jahan influenced to change her faith and further he raised concern that she was being taken to be out of India. Akhila [later hadiya], was a homeopathy student and only daughter of her father Ashokan. She was influenced by Islam culture and norms seeing her two roommates in her hostel. She was more interested into Islam day by day and she use to see their prayers through online platforms. Later she converted herself to Islam and she opened a Islam matrimony account for herself where she found Shafin Jahan. She later ran out of her house and started living with her husband. They got married. Her father complained that she was forced to convert her religion and was also influenced by their wealth and power. Her father filed writ of Habeas Corpus. The Kerala high court in 2018 held that hadiya should be sent back to her parents. It was said that "a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways" and "her marriage being the most important decision in her life, can also be taken only with the active involvement of her parents." But later, Shafin challenged the decision. In the Supreme Court, Hadiya was sent back to her husband after so many other issues. The apex court quashed the high court's judgment. Hadiya had a hard-won victory. There were so many allegations against her. She was even called a terrorist. Here, it can be clearly seen how a woman faces problems just because she decided to live with the person she loved and because of an imaginary conspiracy.

KS PUTTUSWAMI CASE

Commonly known as the right to privacy case, was a landmark judgment. In K S Puttuswamy V UOI, it was held that the right to privacy encompasses the right to be left alone and protects personal choices from the state. Cases like marriage and faith are expressly recognised as 'intimate matter' protected by the right to privacy. A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret...Why should any human being be asked to disclose what his religion is? Why should a human being be asked to inform the authorities that he is changing his belief? What right does the State have to direct the converted to give notice in advance to the District Magistrate about changing his rebellious thought?" The law also endangers a woman's right to privacy by implicitly questioning their consent

to marry and change their religion. It precludes "conversion by marriage", despite the fact that it isn't clear what this term implies. Section 6 of the mandate gives that any union with the "sole reason" of change is void, yet the part additionally gives that 'vice versa' circumstance is void as well. Conceivably this can imply that a change performed for the sole reason for marriage is void as well. As it is clearly mentioned in the ordinance that there must be a mandatory investigation by the police when someone wants to convert and later acceptance of the magistrate, will this amount to right to privacy? Of course not. A public declaration of conversion in front of the public, investigation in personal matters, magistrate's approval all question the right to privacy. Faith, religion, choice are all private affairs, not public. Any law or ordinance which questions the legitimate privacy of a person must be quashed.

SHAHAN SHAH CASE

In this case, the court found little indications that it may be the love jihad issue so the court asked the authorities to find out answers of eight questions; (1) Whether there is a movement called "Romeo Jihad" or "Love Jihad" working in the State of Kerala? (2) If so, what are their plans and projects? (3) Which organisations are involved in such activities? (4) Where does the money come from for all these activities? (5) How many school and college students and youngsters were thus converted into Islam during the last three years? (6) Does the alleged project involve an all-India basis and magnitude? (7) Has it got financial support from abroad? (8) Is there any connection between the "Love Jihad" movement and counterfeiting, smuggling, drug trafficking and terrorist activities? But even after all the efforts, there was no proof of anything as an organisation of Muslims or a conspiracy by Muslims such as 'love jihad'. There was no reliable evidence so far regarding any of the questions. Also, the Christian girl was not in love with anybody, as it is said that in love jihad, a woman falls in love with Muslim man, who thereafter converts her religion by force. Also, the court quoted these lines that 'Let not our people fight against each other in the name of religion and faith. Let not our children be compelled to deviate from their path of pursuit of knowledge and learning. Let our children turn out to be the best citizens of our nation. Let them live freely in the joyous atmosphere. Let love be sublime, divine and free from any other consideration'. The court also mentioned the judgment of Lata Singh V state of UP and said 'This is a free and democratic country, and once a person becomes major, he or she can marry whosoever he/she likes.

CONCLUSION

Anti-conversion laws are known for their extent of misuse and oppressive focusing on minority networks. Execution of these enemies of changes laws show that Muslims are primarily captured under these laws. Against conversion laws make a threatening, and, every so often, fierce climate for strict minority networks by not needing any proof to help allegations of bad behaviour. 'Love jihad', as we have noted, is a sensationalized traditional fear inspired notion with no proof. The Centre told Parliament in February 2020 that there was no lawful meaning of the term and that no such instance of 'love jihad' had been accounted for by any of the central organizations in Kerala. The National Commission for Women in an answer to a 2020 right-to-data question said it didn't keep up information on "love jihad cases. Different examinations by a scope of insightful organizations have discovered no confirmation of any such more extensive scheme of changing over Hindu women. In UP, the public authority made an extraordinary examination group in August 2020; it inferred that no evidence of 'love jihad' could be found. In October 2018, the National Investigation Agency found no proof of a bigger criminal plan of strong change and shut its Supreme Court-requested examination. Comparative outcomes have been found by a scope of police powers across different states in the past as well (here and here). Indeed, even the Kerala High Court reprimanded the act of sensationalizing inter-religious relationships as 'love jihad'. Our nation consists of citizens belonging to different religions, communities, castes and creeds. All are residents of India. All have equivalent rights. All the citizens have the key rights revered in our Constitution. A citizen of India is qualified for the opportunity of inner voice and the privilege uninhibitedly to pronounce, rehearse and spread religion as cherished in Article 25 of the Constitution of India. Our laws don't restrict inter-religion or inter-caste marriage. Valid religions have their own authorizations, confidence and culture. At the point when set in opposition to the Constitution and the laws, the religious sanctions cannot override the former. Our Constitution and the laws take care of religious faith, traditions and custom. Nobody will support forceable conversion, but an imaginary theory like love jihad blaming Muslims which is still not proved should not be supported. If any person is changing his religion, then it is his or her preference. Love jihad is indeed an imaginary theory and the new ordinance is threatening the secularism of our country. India when being a home for many religions, secularism plays a very important or most important role. Laws

like this can create a threat not only to secularism but also can violate many other rights and articles which are provided for every human equally in this country, no matter which religion.

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.

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