

UTTAR PRADESH PROHIBITION OF UNLAWFUL CONVERSION OF RELIGION ORDINANCE, 2020: AN INTRUSION INTO PERSONAL SPACE

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ABSTRACT

A stringent ordinance namely, Uttar Pradesh Prohibition of Unlawful Conversion of Religion, 2020 was passed by the UP Cabinet which came into force on 27 November, 2020. The ordinance relates to marriage and forcible religious conversions. The intention of the ordinance is to prevent what is commonly known as 'love-jihad' which does not even have a clear definition. The ordinance sets forth to give a backseat to the freedom of choice, dignity and human rights. The term life and personal liberty has been interpreted in a more progressive manner and we have reached so far in terms of defining personal liberty under Article 21 but today with such ordinance having the force of law, we tend to move in a completely opposite direction.

Constitution of India imposes several implied limitations on the powers of the State to justify the decisions taken by it which effect the fundamental rights of the citizens. Moreover, the Constitution envisages a freedom of conscience, freedom to profess, practice and propagate religion. Leave alone the right to marry a person of his/her choice, the right to practice, profess and propagate a religion of his/her choice is also a fundamental right. The ordinance is not only a restriction on the freedom of choice but also a restriction on the freedom to profess a religion of one's choice even if it is for the sake of a marriage. The ordinance fails to stand the constitutional scrutiny in terms of personal liberty and right to profess a religion of one's choice.

Keywords: Ordinance, Personal Liberty, Freedom of Choice, Constitution and Dignity.

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I. INTRODUCTION

Marriage is a personal affair and must be seen as a relationship between two consenting adults irrespective of their religion. Today, on one hand, the law allows marriage between the same sex and on the other, is ready to interfere in the personal space of two consenting adults and violating the absolute right of an individual to choose a life partner. The right to freedom of choice emanates from the most cherished right of life and personal liberty. Moreover, Dr. B.R. Ambedkar described this article inter alia Article 21 as the most sacrosanct of all without which the fundamental rights were meaningless. In view of the progressive interpretation of the term 'personal liberty', the UP Ordinance seeks to infringe the right to life of two individuals irrespective of their religion.

The **Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020** is an intrusion into the personal space of an individual as it makes religious conversions by marriage unlawful. It has made religious conversion for marriage cognizable and non-bailable offence and enables any person related to the converted person to lodge an FIR against such conversion. Moreover, the onus to prove that conversion was not for marriage lies on the person who caused the conversion and where such conversion was facilitated by any person on such other person. Also, ordinance requires a 60 days prior notice to be sent to the District Magistrate for such intended conversions and also invites for public objections. This is nothing but an intrusion into the personal autonomy of any individual where he is left to the choices of the people making such objections about his conversions and even affects the inter-faith marriages. Accordingly, a person cannot even profess and practice a religion of his choice even for the sake of marriage and is left at the mercy of the other individuals. Therefore, this ordinance is in complete disregard of the cherished constitutional values and the manner in which it criminalizes religious conversions by marriage is a restriction on the freedom of choice and dignity enshrined under the Constitution of India.

The ordinance needs to be looked into from the constitutional lenses and not by the lens of some who view such marriage between a Hindu and a Muslim couple as a matter of 'Love-Jihad'. Religion, in India, can be used as a tool for communal violence. But marriage, as an institution, must be distinct of any religious concerns. There are other states as well who have anti-conversion laws in force such as Gujarat¹, Maharashtra, Odisha², Madhya Pradesh³, Chhattisgarh, Arunachal Pradesh, Himachal Pradesh, Jharkhand⁴, and Uttarakhand. But the present ordinance has become a centre of discussion due to some provisions which make conversion by way of allurements into marriage a punishable offence and makes it mandatory for those who intend to convert to inform the intention of converting to the district authorities.

¹ Gujarat Freedom of Religion Act, 2003 (with its rules notified in 2008)

² Odisha Freedom of Religion Act, 1967

³ Madhya Pradesh Freedom of Religion Act, 1968

⁴ Jharkhand Freedom of Religion Act, 2017

II. RULINGS OF THE COURTS SO FAR

In recent times, the courts have pressed to much personal liberty as the same is an essential and a fundamental right of every citizen. There are significant judgments of the courts where the personal liberty and the right to life including the right to choose a partner have been held as intrinsic and any interference into such a personal space would constitute a serious encroachment into the right to freedom of choice of two individuals. Article 21 of the Indian Constitution weaves a string of an endless yarn of welfare legislation. The scope and interpretation of Article 21 has been time and again defined and redefined thereby giving it the widest possible amplitude and judiciary has played an important role in lining up the actions of a welfare state.

In **Salamat Ansari & Ors. vs. State of UP & Ors.**⁵ the Allahabad High Court on Nov. 11, had held that the courts, especially the Constitutional Courts were enjoined to uphold the life and liberty of an individual under Article 21 of the Constitution of India. The court said that the right to live with a person of his or her choice irrespective of religion professed by them was intrinsic to right to life and personal liberty and that any interference in a personal relationship of two consenting adults would constitute a serious encroachment into their right to freedom of choice.

It is difficult to understand that when a law permits two persons of the same sex to live together peacefully then neither any individual nor a family nor even State must have any objection to relationship of two major individuals who out of their own free will chose to live together.

In **Shafin Jahan vs. Asokan K.M & Ors.**⁶ the Supreme Court had held that ability to take decisions on aspects of what defines one's personhood and identity was part of the liberty and autonomy which inheres in each individual. Justice Dr. D.Y Chandrachud remarked that the choice of a partner, whether within or outside marriage, lay within the exclusive domain of each individual. Moreover, the intimacies of marriage lie within a core zone of privacy and the same is inviolable. He said that the absolute right of an individual to choose a life partner is not in the least affected by matters of faith. The Constitution guarantees to each individual the right freely to practice, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. A law may provide for the conditions for a valid marriage and it may also provide for the remedies when relationships run aground. However, neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution.

In **Justice K S Puttaswamy v Union of India**⁷, the nine-judge constitution bench of the Hon'ble Supreme Court of India had held that the ability to make decisions on matters close to one's life is an inviolable aspect

⁵ Salamat Ansari & Ors. vs. State of UP & Ors. CrI. Mis. Writ Petition No.11367 of 2020

⁶ Shafin Jahan vs. Asokan K.M & Ors. Criminal Appeal No. 366 of 2018

⁷ K S Puttaswamy v Union of India 2017 (10) SCC 1

of the human personality. The court held *“The autonomy of the individual is the ability to make decisions on vital matters of concern to life... The intersection between one’s mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination... The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.”*

The provision of prior information to the district authorities and objections from the society is quite disturbing as the society has no role to play in determining the choices of the individuals. An individual’s autonomy is founded on his ability to decide on innumerable matters of consequence of his/her daily lives.⁸ The interference by the State into such personal space may have a chilling effect upon the exercise freedoms. And others may be dissuaded to exercise their liberties out of fear of the punishments which may result out of the free exercise of choice.

In **Lata Singh v. State of UP**, the Supreme court viewed right to choose a life partner within the ambit Right to life under Article 21 of the Indian constitution and observed that India is a free and democratic country and once a person becomes a major, he/she can marry whosoever he/she likes.

The Constitution of India guarantees an individual absolute right to choose a life partner as a part of liberty and individual autonomy. Neither the State nor the law can interfere in such matters and dictate a choice of partners.

In **Soni Gerry v. Gerry Douglas**, the three-judge bench observed that the court cannot curtail the liberty of a person who has attained the age of majority. In its judgement, the court clearly mentioned that there is no special emphasis required to state that attaining the age of majority in an individual’s life has its own significance. Every person is entitled to make his/her choice. The courts cannot interfere or curtail the liberty of the person as long as the choice of the person who has attained majority remains.

There have been several judgements in which Apex Courts of India has held that **state and the courts have no jurisdiction over an adult’s absolute right to choose a life partner**. With these judgements in existence, this ordinance clearly acts as an obstacle in the path of an individual to exercise right to choose a life partner.

With reference to the Honour Killings, in **Shakti Vahini vs. Union of India & Ors.**⁹ an important question was raised that whether an individual has a right to choose life partner of his/ her choice. The Court held that the choice of an individual was an inseparable part of dignity. The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. And that it was the obligation of the Constitutional Courts to guard the right to liberty of an individual as the dignified existence of an individual. If liberty cannot be sustained, subject to constitutionally valid provisions of law,

⁸ Common Cause (A registered society) v. U.O.I Writ Petition (Civil) No. 215 of 2005

⁹ Shakti Vahini vs. Union of India & Ors. (2018) 7 SCC 192

the life of a person becomes comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The obstruction, of any sort, to an individual's right to freedom of choice may lead an individual to live an undignified life.

Moreover, Article 16 of the UDHR emphasizes the fundamental importance of marriage as an incident of human liberty:

Article 16. (1) *Men and women of full age, without any limitation due to 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."*

III. UP ORDINANCE: AGAINST THE ETHOS OF LIBERAL CONSTITUTIONAL IDEA

The UP Ordinance under section 6 states that "*any marriage which was done for the sole purpose of unlawful conversion or vice versa*" shall be void. This means that if two consenting adults have decided to convert their religion for the purpose of marriage, their marriage would be declared null and void. Through this ordinance, the state is 'regulating' marriage and the conscience of the citizens. This raises an important question whether the state can regulate the private affairs of the citizens and to what extent?

Further, section 8 dwells into 'prior consent' of the district authorities (District Magistrate) before sixty days of getting married. Based on which the DM would conduct an enquiry with the help of police to know the real intention for conversion. This section gives an unregulated discretion to the DM or the police and this would only increase arbitrary denial of conversion/free conscience. The Constitution of India gives a right to propagate, practice, profess religion and freedom of conscience to every individual. Therefore, by virtue of Article 25 of the Constitution, an individual can exercise a right to convert his religion and the same is personal to an individual which the state should not be allowed to regulate. When a person chooses to change his/her religion then that person uses his/her conscience and he/she knows what is right or wrong for them. Hence, this regulation of a person's conscience would fail to stand the constitutional scrutiny.

It is necessary that forced conversions should be stopped as it goes against the human will and conscience. But a law to curb such a menace must not be allowed to put many barriers between those conversions which are not forceful. This is in complete violation of the rights of an individual. A person is free to convert his religion, even if it is for the sake of marriage. This is the choice of the individual and the choice made by an individual must not be constrained through various provisions of the law. The law must function as

per the social realities and the reality is that the people who convert their religions for marriage are usually those couples who are performing inter-faith marriages.

IV. CONCLUSION

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion, 2020 ordinance was brought into existence with the aim to get rid of 'Love- Jihad' and in order to achieve this aim this ordinance not only put a restriction on the freedom of choice but also on the freedom to profess a religion of one's choice even if it is for the sake of a marriage. This ordinance not only have a negative impact on inter-faith marriages but also violates an individual's right to choose a life partner which is included within the ambit of Right to Live and Personal Liberty under Article 21.

The Constitution of India guarantees an individual absolute right to choose a life partner as a part of liberty and individual autonomy. There are a number of judgements passed by courts which clearly mentions that neither state nor the courts have jurisdiction over an adult's right to choose a life partner. Hence, this ordinance is nothing but an intrusion in the personal space of two consenting adults. India being a free, democratic and secular country provides its citizens the right to choose, propagate, profess and convert his/her religion. It is the duty of the government implementing such laws to ensure that these laws do not violate the fundamental rights of an individual and maintain a balance between the freedom of people and unlawful conversions.