

Love-Jihad a Law?

Is ordinance promulgated by the Uttar Pradesh cabinet on religious conversion and inter-faith marriages motivated by communally divisive agendas with the object to polarise communities and reap electoral benefits?

The ordinance, “Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020” has been a subject of intense debate due to the implications it could have on inter-faith marriages. This ordinance just not governs inter-faith marriages but all religious conversions and has laid down elaborate procedure for any individual who desires to convert to another religion.

The petition was filed by one Saurabh Kumar who has challenged the ordinance on the ground that it is violative of privacy and individual autonomy guaranteed under Article 21 of the Constitution of India.

The aforesaid ordinance requires every religious conversion to be scrutinized and certified by the state. The very idea of driving a person to clarify and legitimize a choice, which is intently close to home to him/her, before an official of the State is in opposition to Constitutionalism.

The plea states that Sections 3, 4 and 6 of the ordinances provide the State with policing powers over a citizen's choice of life-partner or religion and affect against the fundamental rights to individual autonomy, privacy, human dignity and personal liberty guaranteed under Article 21 of the Constitution.

The ordinance ends up in an unreasonable intrusion into the domain of a private autonomy, it has been submitted. The ordinance mandates that any individual who desires to convert should give an advance notice of a 60 days to the District magistrate of that jurisdiction. After that a police enquiry into the applied conversion will be held. Also the religious priest from whichever religion the individual is going to convert will also have to give prior notification to the magistrate or police. After the conversion, the individual must appear before the District magistrate for validation. The authority will notify the conversion and will invite public objections, before confirming the conversion and then certify the conversion. The dilemma of public objection is vague considering who can object or can anyone object?

The petition also mentions to the law laid down by a Division Bench of the Allahabad high court in *Salamat Ansari & 3 ors. v. State of U.P. and ors.*, wherein it was held that the right to live with a person of his/her choice regardless of religion professed by them is intrinsic to right to life and personal liberty contending that the above ordinance is antithetical to the law. It has been submitted that ordinance assumes a 'tone-deaf' position to the present latest ruling of the high court, that is in line with the expansive meaning given to 'personal liberty' by the Supreme Court in its decisions in *K. S. Puttaswamy*.

In *KS Puttaswamy* the Supreme Court ruled that an invasion of right to privacy by the State should meet a threefold demand of LEGALITY, NEED and PROPORTIONALITY to pass the Constitutional muster. It is the petitioner's case that whereas the the ordinance satisfies the first condition of 'legality', the State action falters once it involves the tests of 'need' and 'proportionality'. The ordinance as seen as whole, will be an invasion to the right of privacy to an individual as it does not justify the need and proportionality of such laws.

The ordinance, the plea alleges, is to just serve a political purpose and is impelled by communally divisive agendas that may impact the societal peace and harmony. "The issue is emotive and pursues to divide communities. It is yet one more way to polarise our polity and reaping electoral dividend," the petitioner has contended.

Is the ordinance morally and constitutionally repugnant?

Exp that the penal provisions go against the core principles of criminal jurisprudence, it has been expressed that the practice of converting religion only for the sake of marriage would possibly at the worst be termed as "ethically objectionable", However, an equivalent can't be criminalised. The petitioner has, therefore, wanted a stay on the operation of the impugned ordinance that has completely failed to strike a balance between freedoms and mala fide conversions. Recently, a similar petition was filed before the Supreme Court challenging the validity of the ordinance stating that the ordinance will be ill-used to falsely implicate folks and will result in chaos and concern. Is it a pressure on the Judiciary when such ordinances are supported by the state or the pressure on the public? A distinguished former judge of supreme court was asked, "are judges under pressure?" to which he replied, "only if they acknowledge it.". The PILs and opposition of such ordinance is a step towards acknowledging negative societal changes in world's largest democracy.