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***Love jihad* in India and its socio-legal conspectus: conversion dilemma and contentious laws**

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Love jihad in India and its socio-legal conspectus: conversion dilemma and contentious laws

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Abstract: While the Constitution of India guarantees several rights relating to religious freedom, there is no mention of the right to convert to another religion. In India, marriages are mostly governed by religious personal laws. Historically, inter-faith marriages have been looked upon with suspicion and laws against conversion have existed, both pre and post enactment of the Indian Constitution. Recently, the term ‘love jihad’ has emerged with a negative connotation and is described as a campaign propagated by Muslim men for converting Hindu girls’ religion on the pretext of marriage. Consequently, several states in India have enacted strict laws to punish forcible or fraudulent religious conversion through and for marriages. The article critically analyses these enactments and argues that these laws hamper the attainment of several rights. The conspectus of these debatable laws, social conditions and court decisions highlight the need for systemic and systematic research and reform.

Keywords: inter-faith marriages; personal laws; religious freedom; love jihad; Constitution of India; anti-conversion laws; religious conversion; India; Islam; Hinduism.

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1 Introduction

Religious conversion is regulated as well as prohibited in several countries. In 2015, there were 42 countries imposing restrictions on religious conversion.¹ There are several implications of such restrictions on the life of individuals and society as a whole. According to *Heiner Bielefeldt*, absence, and contravention of the right to convert to another religion has emerged as an important human rights concern.² In India, marriage is regulated mostly through the rules of personal law emerging from the religion of an individual. The Hindu Marriage Act, 1955 allows marriages between Hindu, Buddhist, Jain, or Sikh religions.³ Inter-faith marriages are also permitted under the Special Marriages Act, 1954. According to the Islamic personal law, a Muslim male may enter into a valid marriage with a Muslim woman or a *Kitabia*, that is, a Jewish or a Christian woman. However, he cannot marry an idol or fire worshipper. It must however be noted that such a marriage with the idolatress or a fire-worshipper, is not void, but merely irregular⁴, and such an irregularity can be removed if there is conversion to Islamic faith.⁵ Other religions also have their own specific criteria for marriage and its validity.

Inter-faith marriages have always been a contentious issue in India leading to riots and fights in different communities. Recently, however, the term 'love jihad' as used in this article came to light when it was used by the High Court of the State of Kerala in India in the case of *Shahan Sha v. State of Kerala*.⁶ The court described love jihad as a situation in which in order to convert a woman to Islam, Muslim boys feign and pretend to fall in love with Hindu or Christian girls and convince them to marry after converting to Islam. The term has over time caught the attention of media and groups who have been fighting against religious conversions. Thus, today, 'love jihad', or 'Romeo jihad' has become a widely used term in the Indian parlance. It often describes a campaign propagated by Muslim men of converting Hindu girls' religion on the pretext of love and marriage.⁷ It is argued that this is a 'new tool for Islamization of Bharat [India]'⁸ that aims to threaten the demographic religious majority.⁹ The word 'love jihad' has never been officially outlined or defined under any law or government policy.¹⁰ Although jihad does not carry a harmful connotation as such, it has received more interest in recent years because of its usage by terrorist and radical factions. Therefore, in the context of this article, the term 'love jihad' would mean marrying a person with the sole purpose of changing their religion to Islam.

Controversy regarding conversion laws and their relationship with inter-faith marriages have emerged in India as a result of the promulgation of laws in different Indian states namely the Uttarakhand Freedom of Religion Act, 2018, Himachal Pradesh Freedom of Religion Act, 2019, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Madhya Pradesh Freedom of Religion Act, 2020 and most recently, in April 2021, the Gujarat Assembly promulgated the Freedom of Religion Act, 2003 Amendment Bill. All of these laws aim to punish forcible or fraudulent religious conversions including through marriage by enacting stricter provisions and penalties. Comparable laws exist in other states of India that restrict religious conversions and outlaw specific forms of conversions including through or by marriages.¹¹ It has been alleged that anti-conversion legislation enacted in these states has resulted in an increase in instances of coercion, harassment, and violence directed at religious minorities, especially the Christians and Muslims.¹²

While all these laws, theoretically apply equally to all interfaith marriages, however, it is seen that they mostly affect Muslims since Islamic personal law mandates a

non-Muslim to convert in order to sanctify a marriage and make it regular. Only Hindu-Muslim marriages have been targeted so far. For instance, since the law came into effect, the authorities of the state of Uttar Pradesh in India have filed cases against 86 people, 79 of whom are Muslim and remaining are Christians.¹³ The article thus, discusses India's conversion laws, especially in relation to the controversy of 'love jihad' and studies them in light of the country's constitutional and international law obligations. The article starts with a brief trajectory of the history of conversion laws in India. Thereafter, it moves on to provide a precis of state specific legislations, i.e., The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Madhya Pradesh Freedom of Religion Act, 2020, and Freedom of Religion Act, 2003 Amendment Bill 2021. The article then critically evaluates these laws in terms of India's international legal obligations and the relevant judicial decisions and provides a concluding analysis.

2 The protracted trajectory of anti-conversion laws

Laws against conversion have existed both pre and post-enactment of the Indian Constitution. Inter-faith and inter-caste marriages have been looked upon with suspicion historically and usually lack approval from family because of sociological perspectives wherein it is feared that the moral, social, cultural, traditional and property relations may be diluted.¹⁴ Going against the customs and religion implies going against the family value systems as well as disrespecting the commands of God.¹⁵ In extreme cases, such inter-faith relationships can lead to honour killings or excommunication of individuals.¹⁶ Sociologically, the primary reactions to such marriages by family and communities may be attributed to the normative pattern that suggests a patterned behaviour of the families and communities and implies that such institutions follow self-regulation. Such self-regulation entails a hierarchy where at the first level there is self-regulation of the individual who must follow the social norms and on failure to adhere to these norms, a feeling of culpability is evoked. At the next level, lies the family and relatives who oversee the individuals and regulate actions using sanctions. Finally, there is the societal level with formal punishment model.¹⁷

In the past, invaders both Muslim and Christians dismantled the socio-cultural structure in India whereby there was sexual and honour related exploitation of women. Idea of purity of women if polluted by an invader continues to fear the families and communities even today.¹⁸ Previously, such women were socially shunned and at times, even today are slaughtered in the name of 'honour killing'.¹⁹ Common anti-conversion laws began to emerge in the 1930s in the several princely states in India²⁰ and also in those territories which were not under the control of British colonisers.²¹ These laws were enacted to 'preserve Hindu religious identity in the face of British missionaries'.²² Some examples of these laws include, the Raigarh State Conversion Act, 1936, Udaipur State Anti-Conversion Act, 1946 and the Surguja State Apostasy Act, 1942. Thereafter, in the 19th and 20th centuries, there were movements that led to breaking and challenging of orthodox social norms and inter-caste, inter-faith marriages gained some societal approval along with widow remarriages.²³

After India gained independence from the Britishers, the Indian Parliament debated many anti-conversion bills, however, none of these became enactments.²⁴ For example, in 1954, Indian Conversion (Regulation and Registration) Bill was tabled in the Parliament

for, 'licensing of missionaries and the registration of conversion with government officials'.²⁵ However, it failed to get the majority votes. Next, there was the Backward Communities (Religious Protection) Bill in 1960, "which aimed at checking conversion of Hindus to 'non-Indian religions' which, as per the definition in the bill, included Islam, Christianity, Judaism and Zoroastrianism."²⁶ Similarly, in 1979, there was an endeavour to bring the Freedom of Religion Bill for 'official curbs on inter-religious conversion'.²⁷ All these attempts failed. Subsequently, starting from 1967, several states in India including Orissa, Himachal Pradesh, Madhya Pradesh, Gujarat, Arunachal Pradesh, Tamil Nadu, and Rajasthan among others passed anti-conversion laws. The purpose of such legislations was to curtail religious conversions taking place by force, fraud or enticement and required prior permission from authorities to proceed with such a religion change. While states have enacted these laws, there is no central legislation in India on the issue. Right to marry is also not a specific right and even the Constitution of India lacks a specific enunciation of right to marry as a fundamental right. The right however has been interpreted within the contours of the fundamental right to life and liberty under Article 21 of the Indian Constitution.²⁸

While anti-conversion laws have existed since long, 'love jihad' as a term gained attention after the decision of the Kerala High Court in 2009²⁹ and through media reports of incidents of such conversion. In 2011, a Muslim man and an Islamic priest were arrested for taking part in a wedding ceremony in which the woman had not registered her conversion from Hinduism to Islam with the authorities.³⁰ In 2012, Kerala State Legislature reported that since 2006, around 2667 women had changed their religion to Islam in Kerala.³¹ With love jihad becoming a strong ideological utterance, in order to assess the current sociolegal concretisation of inter-faith marriages in India, it is important to study the contentious state laws on conversion including The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Madhya Pradesh Freedom of Religion Act, 2020, and Freedom of Religion Act, 2003 Amendment Bill 2021.

The Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020³² became enforceable in the state of Uttar Pradesh on November 27, 2020. By Section 6 of this law, any marriage done only for the purpose of conversion or vice versa is void. Under Section 8, individuals wishing to convert, as well as religious convertors, i.e., those who carry out the conversions, are required to give an advance declaration of the intended religious conversion to the District Magistrate within the prescribed notice period. Any breach of this procedure would result in the penalties. For those witnessing the unlawful conversion the punishment is an imprisonment of six months to three years and minimum fine of 10,000 Indian rupees. A person undergoing conversion may be imprisoned for up to five years and a fine of minimum 25,000 Indian rupees. According to Section 8, after obtaining both declarations, the District Magistrate must conduct a police investigation into the proposed conversion's purpose, motive and cause. Further that, on such enquiry, if there is a contravention, then the District Magistrate shall render the proposed conversion illegal and void. The converted person must send a declaration to the District Magistrate under Section 9 of the Ordinance within 60 days of the date of conversion consisting of information such as the person's name, address, and old and new religions. A copy of such declaration will be displayed publicly to seek objections. Within 21 days of dispatching the declaration, the converted person must present themselves before the District Magistrate to ascertain his or her identity and validate the information in the declaration. The conversion will be declared illegal and invalid if these

steps are not followed. The ordinance prohibits conversion of religion through force, misrepresentation, undue influence, allurement, fraud, or the most criticised aspect conversion by marriage. Thus, religious conversion is now a cognisable and non-bailable offence that can result in a sentence of up to ten years in prison and a fine. Furthermore, each repeat offence will be punished twice as harshly as the first offence. According to Section 12 of the ordinance, the burden of proof to establish the legality of a religious conversion is placed on those who cause or facilitate such conversions. So far, this law has resulted in several arrests and complaints in the state of Uttar Pradesh.³³

Following the lead of Uttar Pradesh Ordinance, Madhya Pradesh Freedom of Religion Act, 2020³⁴ was passed in the state of Madhya Pradesh on March 27, 2021. This ordinance also sets out the procedures for undergoing religious conversion and forbids conversions that are performed unlawfully. These laws also require the court to convict an accused for other offences that he or she might be charged with under the Indian Criminal Procedure Code of 1973 during the same trial. It places the burden of proof on the individual accused of causing an illegal religious conversion to prove its legality. Most recently, another Indian state, Gujarat passed the Freedom of Religion Act, 2003 Amendment Bill in April 2021, which aims to punish forcible or fraudulent religious conversion through marriage by enacting stricter rules against forcible conversion through marriage or allurement. The Statement of Objects and Reasons of the Bill states that, it aims to stop the “emerging trend in which women are attracted to marriage for the purpose of religious conversion.”³⁵ All these laws have similar punishments and fines. Therefore, while personal law allows interfaith marriages these impugned laws in the Indian states of Madhya Pradesh, Uttar Pradesh and Gujarat have made marriages where one converts to another unlawful and subject to excessive scrutiny. In doing so, these laws have made inter-faith marriages unlawful in specific situations. As of February 2021, the Supreme Court of India refused to put a stay on these controversial laws that aim to deal with love jihad.³⁶

3 Human rights obligations and oscillating judicial decisions in India on right to marry and right to religious freedom

India has signed all the major international human rights instruments and therefore, has obligations under these international documents. The right to convert and adopt a different religion is safeguarded by Article 18 of the Universal Declaration of Human Rights (‘UDHR’), which declares that “the right to freedom of thought, conscience, and religion... requires freedom to alter [one’s] religion or belief...” The International Covenant on Civil and Political Rights (‘ICCPR’) recognises both the right to convert and the right not to be forced to convert under Article 18. In its General Comment No. 22, the Human Rights Committee stated unequivocally that the freedom to choose a religion cannot be restricted whatsoever and that these freedoms are guaranteed unconditionally.³⁷ Article 18(1) of the ICCPR, for example, covers not only internal aspects of belief, such as faith and choice, but it also guarantees the “freedom to express [one’s] faith or belief in worship, observance, practise, and instruction, whether alone or in community with others, in public or private.” Article 19(2) of the ICCPR guarantees the right to freedom of speech which also encompasses the freedom and right to engage in interactions with people of other faith. Spreading information about the religion and

convincing others is also permitted if done without coercion. *Bielefeldt* argues that to put restrictions on the limit of freedom of expression of religion, the state must develop standards and criteria that meet Article 18(3) of ICCPR which provides that such regulations must be “prescribed by statute and required to protect public safety, order, health, morality, or fundamental rights and freedom of others.”³⁸ Thus, the international position provides several rights to choose, practice and express one’s religion.

The Constitution of India guarantees religious freedom vide Articles 25 to 28. Conversion has not been dealt with in any central law in India. The package of religion contains several rituals and while there maybe collective implementation of religious practices, the right under Article 25 of the Indian Constitution is a fundamental right of an individual.³⁹ The controversy arises as to the right of propagation of that religion and in this lies the very debate of conversion for marriage wherein it is argued that propagation can imply persuading another to convert by adopting a religion and practising its rituals. The decision in the case of *Rev. Stanislaus v. State of Madhya Pradesh and Orissa*⁴⁰, the Supreme Court of India considered anti-conversion laws and assessed if the freedom to practise and spread one’s faith included the right to convert another to one’s own religion. The court upheld the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967 as legitimate anti-conversion statutes. The Indian Constitution, according to the court, does not provide for a right to convert others but “[the right] to transmit or spread one’s religion through an exposition of its tenets.” The court articulated that allowing anyone to try to convert others would automatically hamper their right to freedom of conscience:

“It has to be remembered that Article 25(1) guarantees ‘freedom of conscience’ to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the ‘freedom of conscience’ guaranteed to all the citizens of the country alike.”⁴¹

Thus, as per this decision, conversion enjoys no protection under the Indian Constitution. The decision unfortunately, failed to distinguish between the freedom of conscience which is involved in the religious conversion and the several practices and steps taken to adopt the religion. The mental element of conversion and the physical element of rituals are both combined by the court. This means that it is important to categorically differentiate between ‘adopting’ a religion and the consequent process of ‘conversion’. Adoptions are usually voluntary, and conversion may involve rituals, priests, and other actions to substantiate the adoption of another religion. Freedom of religion in itself can be restricted in light of public order, health and morality. The court also used the public order exception of Article 25 to justify restricting religious freedom.⁴² However, it failed to explain comprehensively how conversions amount to disruption of public order. The judgement specifically stated that, “if an attempt is made to raise communal passions, e.g., on the ground that someone has been forcibly converted to another religion it would in all probability give rise to an apprehension of a breach of the public order affecting the community at large.”⁴³ The court therefore held that it is permissible to make such laws in order to prevent disruption of public order since such religious conversions can hurt the conscience of the community. The decision made conversion an issue of public order. Thus, the judgement may be criticised because conversion *per se* is not a menace to public order and therefore, state legislatures do not have the competence to promulgate

such legislations on this ground. Conversions or religious activities involving violence, use of arms, destruction of public property, use of force, etc. could amount to a threat to public order but not the conversion to get married.

In another case, *Smt Noor Jahan Begum @ Anjali Mishra and Anr v. State of U.P. and ors.*⁴⁴ The Allahabad High Court rejected the writ petitions, which were filed by couples who sought protection orders from the court. The woman in this case had converted to Islam and thereafter, nikah (marriage) ceremony had taken place. The court discussed whether absence of knowledge about Islam and mere conversion for the purpose marriage could be considered as valid. If the court equates knowledge and understanding of another religion as a prerequisite for conversion, then inter-faith marriages would not take place at all, because religious instruction and learning takes time and practice. Thus, the criteria of what could be a valid conversion have not been correctly outlined by the court. The court has also reaffirmed the Supreme Court's stand in the case of *Lily Thomas v. Union of India*, "It observed that conversion by an individual to Islam can be said to be bona-fide if, he/she is major and of sound mind and embraces Islam with his/her own free will and because of his/her faith and belief in the oneness of God (Allah) and prophetic character of Mohammed."⁴⁵ Thus, the court observed that conversion just for the purpose of marriage is unacceptable.

These cases suggest that inter-faith marriages where a conversion is required for solemnisation of the marriage, e.g., converting to Islam to make the marriage regular, become unacceptable automatically under the current ordinances. It is submitted that if one is ready to change the religion willingly, in order to get married, such a decision cannot be subject to public and official scrutiny and further, cannot be criminalised. In doing so, there is a clear violation of the right to religion and marriage by choice. While it may be argued that a ritual for conversion cannot be conducted by force, fraud, allurements, etc, however, it goes too far to suggest that one has no right to perform conversion at all. One is ready to adopt a religion following the conscious decision and thereafter, rituals follow. This, therefore, makes it difficult to understand how one has a right to spread the religious knowledge but has no right to convert another to it.

Further, while it is assumed that a person is being forced in some circumstances, it must also be assumed that one has free will to embrace a new religion. To adopt one religion is a choice of an individual and therefore, if someone is ready to adopt a religion and follow the course of conversion and thereby, marry another person, such right to choose, convert and adopt must also be protected. This scepticism surrounding conversion usually stems from the perception of keeping the race pure. Pure proselytisation therefore may be differentiated with an act that is 'impure' and is caused by factors other than the free will to convert.⁴⁶ As *Mubaraki* suggests, "Women's bodies [were] deemed the repositories of men's honour, the community's morality, and the nation's territorial integrity, which were subjected to brutal violence both sexual and otherwise, since as a symbol of lineage and purity, women's bodies once violated sexually would purportedly designate the entire collectivity as dishonoured and shamed."⁴⁷ It may be argued that love jihad therefore, patriarchal in its nature assumes the woman is unable to make a rational choice and the men have rights over her. Thus, conversion to another religion for marriage would take away that control. Right to choose and marry a partner of one's choice whatever be the religion, therefore, attempts to protect women's rights by discrediting the practises that uses them as a tool of sustaining the reproductive purity of caste, race and religion.⁴⁸

The Supreme Court has clearly pronounced in *Shafeen Jahan v. Ashokan K.M.*⁴⁹ that the “right to marry a person of one’s choice an integral part of Article 21 of the constitution.” Article 21 provides for the right to life. The court considered the claim that the petitioner Hadiya was duped into marrying Mr. Shafeen Jahan and forcefully converted to Islam by her parents and found the allegation to be clearly false. It was decided that the intricacies of marriage, including individual decisions on whether and whom to marry are beyond the state’s control. Interference by the government in such matters has an adverse impact on people’s ability to exercise their rights. Similarly, in *Shakti Vahini v. Union of India*, the apex court remarked, “life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of the identity of a person.”⁵⁰ The Supreme Court of India reaffirmed that a person’s right to marry, whatever be the religion, is a fundamental right under Article 21 of the Constitution.

Indian courts have attempted to uphold the freedom to select a spouse of one’s choosing as a constitutional right in a number of landmark decisions, reiterating that this right is unaffected by disparities of faith and religion. Right to marry and right to convert being different rights still become relevant when the religion requires a woman to convert in order to marry. Thus, if there is a right to marry, all possible steps to promote that right, including if there is a conscious choice to convert must also be supported. In *Lata Singh v. State of Uttar Pradesh and Ors*, the court noted that:

“This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes. We sometimes hear of honour killings of such persons who undergo intercaste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing, but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment.”⁵¹

Right to choose the life partner and right to marry therefore, are personal rights. In *Trishla Rai and Another v. the State of U.P.*⁵², the Allahabad High Court held that individual autonomy should be given priority in cases related to marriage. This was further substantiated by *K.S. Puttaswamy v. Union of India*⁵³ judgement provided that right to privacy is a fundamental right and that individual autonomy must be respected. Since the court has held that right to choose a life partner is an absolute right, if a law, takes away this right, it could be questioned on its constitutionality. More recently, in *Salamat Ansari and Ors v. State of Uttar Pradesh and Ors*, Allahabad High Court has reaffirmed this position and noted that, “An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty.”⁵⁴

The Supreme Court and High Courts have therefore, recognised right to marry, right to choose one partner and religion as engulfed in the right to life, liberty, and dignity as well as the right to religious freedom. Right to inter-faith marriage carries with itself an understanding that in cases where it may be required by personal law, conversion may be done. An act of conversion as discussed above, is an act of person choice, unless done via allurements, fraud, and other vitiating factors. Right to marry and right to convert oneself for this purpose therefore, become individual rights and neither society nor state has an any right to interfere in this. Supreme Court clearly observed that, “The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.”⁵⁵ However, devoid social acceptance, such marriages, and conversions, find great opposition. This, therefore, creates discomfort and agony for those intending to marry a

person of another religion, particularly where conversion is required by religion as a requirement for marriage, even when the intention is ‘merely’ to marry, and conversion is a subset of the tradition in that regard. Personal laws and statutory laws are creating a divide that is unwarranted in a secular democracy.

4 Critique of the anti-conversion laws

4.1 International perspective

As previously stated, the ICCPR acknowledges the right to express one’s views in Article 19, and this, combined with Article 18’s guarantee of religious sovereignty, means that citizens must be able to share their religious beliefs. It is argued that such acts and ordinances as passed in India instil fear among members of one religion about discussing their religious views, thus restricting religious expression rights.⁵⁶ According to Article 18 of the ICCPR, there can be no limits on the right to have or follow a particular faith or religion, but these laws are specifically intended to impede this option if conversion by choice also becomes so onerous. In General Comment No. 22, the Human Rights Committee stated that no one should be pressurised to divulge his or her faith to anyone.⁵⁷ India is a signatory to all these and is therefore, bound by its human rights obligations.

4.2 Lack of evidentiary proof

The laws in Uttar Pradesh, Madhya Pradesh, Gujarat, and other such laws are without basis because there is hardly any evidence that points to the fact that Islamic community is always strategically persuading Hindu women to convert to Islam. There is no census record or government report indicating this. A 2013 study on interfaith marriages in India reveals that highest interfaith marriages are amongst Christians with 3.5%, followed by Sikhs with 3.2% and then Hindus and Muslims 1.5% and 0.6%, respectively. The data, however, does not provide pertain to the religion in which the woman gets married into.⁵⁸ This is not a significant number. Further, on October 20, 2020, National Commission for Women had tweeted that, there was a rise in love jihad cases. However, on November 11, 2020 in a Right to Information application, the National Commission for Women said, “No specific data under the category of complaints related to love jihad is maintained by the NCW.”⁵⁹ Thus, the claim that there is increase in love jihad marriages has no supporting data. Further, the laws seem to spread the presumption the converts have been forced and their consent to such conversions is always forceful. The discussion largely accentuates the idea that all these conversions via marriage to Islam are problematic and therefore, must be regulated and investigated.

4.3 Constitutional scrutiny

At different stages, these laws fail to follow constitutional scrutiny. These new restrictions which impede conversion do not adhere to the due process test laid out under Article 21 of the Indian Constitution since it curtails the free choice of even those who wish to convert and marry in good faith. This counters the very principle that free will may not be subject to intention and therefore, object of conversion becomes immaterial.

Constitutional rights including the basic fundamental right to life and personal liberty are therefore, impacted at several levels.

Further, while these laws prohibit religious conversions by deception, compulsion, unnecessary pressure, bribery, solicitation, or any other deceptive methods, or by marriage, they do not apply if the individual reverts to their previous religion. As can be seen, all three laws require a person who wishes to convert to inform and obtain permission from government officials. This exposes them to the scrutiny and decisions of officials who may or may not agree with the conversion. The authorities intrude on people's choices of spouses or religion, resulting in violations of their confidentiality, freedom, and individual rights. It is also feared that declaring the names of spouses publicly can provide a lot private and personal information to radicals, who may also threaten the person attempting to convert. This is because these ordinances require the authorities to publicly display this personal information and invite objections from general public. Constitutionally, restrictions can be placed if they are reasonable and also in proportion to the anomaly or harm that these restrictions aim to prevent. Such restrictions add chilling effect by outlining complicated steps that a citizen must take and in turn this permits the government to intrude the fundamental right to privacy of a citizen. Such compulsory police investigation, publication of private information and declarations make marriage more of a public order issue than a private affair. Asma Jahangir, the United Nations Special Rapporteur on freedom of faith or belief from 2004 to 2010, admitted that such anti conversion laws, "have been criticized on the ground that the inability to clearly identify what constitutes an unlawful conversion bestows on the authorities unlimited power to recognize or deny the validity of religious conversions."⁶⁰

4.4 *Innocent passive victims*

These laws provide the courts with the power to ascertain if the marriage was for the only purpose of unlawful conversion of a woman of one religion by a man of another religion. While not only taking away the free will and choice of the woman, but the law also substantively discriminates between men and women arbitrarily with no reasonable cause. This perpetuates the violation of the fundamental right to equality. Further, conversion laws, according to *Jenkins*, "build women, scheduled tribes, and scheduled castes as victims, and convert (particularly group converts) as passive dupes of active converters' machinations." Converts from disadvantaged communities, generally stated as the 'weaker sections' of Indian culture, are reduced to victims because of such words and incapable of making rational decisions. As a result, converts are treated as victims rather than people who make their own decisions.⁶¹ In the anti-conversion laws emphasising illegality of marriages via conversion, the person who 'caused' the conversion bears the burden of proof that the conversion was 'lawful'. The views, perceptions and opinions of the converted person are not considered at all. Since it is usually the woman who has to convert, this also results in a patriarchal perception in the way a woman should be treated. In this case, mostly as an object with no capacity to choose to convert and change her religion. Such laws could definitely provide help if the conversion of a woman is by force. It may essentially threaten the 'convertor'. Such laws must be struck down as they contradict numerous Indian court rulings that uphold the

freedom to choose a companion and the right to religion. The social capital of a woman is usually tied to their families and such laws strip the women of their own right to choose and autonomy. The focus is instead on their value whereby daughters must be protected and have no agency of their own. Such objectification whereby a woman is reduced to their ability to reproduce in the same community, religion, or caste, converts her into a commodity.⁶²

4.5 Essential safeguards for religious freedom

Proponents of anti-conversion legislation claim that these laws are meant to discourage conversions or conversion attempts carried out by coercion, incitement, or deceit. As a result, anti-conversion laws are portrayed as essential safeguards for religious freedom, which is guaranteed both by the constitution and by international instruments as described above. However, critics claim that the laws are based on a pro-Hindu nationalism rather than religious minorities.⁶³ The defence of religious freedom is harped upon by both proponents and critics of anti-conversion laws to justify their positions. As *Leidig* notes, a Hindu woman is a national pride and therefore, any impurity to her becomes an attack on nation. Muslim men on the other hand, are presumed to be instinctively anti-national.⁶⁴ It is argued as another symptom of insecure nationalism.⁶⁵ The purpose of the law is questionable when one examines how states had previously enacted schemes to incentivise inter-faith marriages. For example, Uttar Pradesh itself during its undivided phase introduced such a scheme in 1976. The Intercaste and Interfaith Marriage Incentive Scheme was brought into effect in 1976 by the National Integration Department of the then Uttar Pradesh state government. The incentive then was 10,000 Indian rupees which was increased to 50,000 Indian rupees in 2013. In order to avail the benefits under this scheme, an interfaith couple would have had to apply to the district magistrate within two years of the wedding and after verification, the couple is provided with a sum of money. This changed in 2017 with the political party, Bharatiya Janta Party led Uttar Pradesh Government brought out a rule that if the interfaith couple converted after they got married, they would then lose the incentive.

All this also connects with the India's Special Marriage Act, 1954 which allows inter-faith marriages and while secular in nature requires approval of family members for marriages. Like the ordinances and acts, it also required a compulsory notice prior to marriage and then 30 days to ascertain any objections from general public. However, previously if one of the parties changes the religion and converts to that faith then customs and religious laws could be applied for the marriage. It has thus been argued that the Special Marriage Act, 1954 was in fact forcing the intending parties to convert for marriage and leading to deemed conversions.⁶⁶ Therefore, Special Marriage Act, 1954 which was intended to overcome social hostility and prejudice, has also proven to be similar to these ordinances and acts. Now, with the new love jihad ordinances and acts, conversion itself can be brought to question and lead to contradictions. It is also submitted that *vide* personal laws, change of religion precedes marriage and therefore, if the impugned ordinance and acts have aimed to criminalise such adoption of religion, then there can be no inter-faith marriages at all in India.

5 Conclusions

Marriages are considered a strong instrument for bridging divides and the most effective way to break down impediments between social classes based on caste and religion. Such laws as those aimed at countering love jihad deters people from interfaith marriages, particularly at a time when more and more interfaith marriages are needed to alleviate the growing polarisation in Indian society. Furthermore, the Indian Constitution guarantees citizens' freedom to choose, and such a law limits any adult's right to engage in relationships and marriage with a person of their liking.⁶⁷ India's anti-conversion laws are in violation of India's international obligations as well since these laws curtail the privacy rights and other basic human rights. While these laws aim to hinder the majority religion from becoming a marginal religion, in the process, they allow religious fanatics to harass religious minorities in the name of inhibiting involuntary conversions. There may be threats to those aiming to convert since the information would be in public domain. Several groups have historically used the love jihad tactic to interrupt inter-faith relationships and intimidate the inter-faith couples, despite there being no proof of such theories. Some have called the campaign anti-feminist due to its paternalistic approach toward women's marriage choices and the perceived use of women's rights as a front for Hindu nationalism.

Love jihad is a fictional idea focused on rhetoric that encourages social discord, fosters long-term mistrust of Islam and the Muslim community, cultivates enmity and disrupts peace. It is true that the challenged laws set out the steps that people must take if they want to convert from one religion to another, and they are not limited to interfaith marriages. However, the implications are largely seen on only a few communities. The act and ordinance seem to be based on conspiracy theories, with the notion that all conversions are unlawfully forced upon people who have reached the age of majority and thus, the converts are merely victims with no right to choose.⁶⁸ It requires a set of complicated procedures to be followed both before and after conversion. To Hindu extremists, 'love jihad' is the purported conspiracy by Islamic community which aims to increase the number of conversions and also seduce naive Hindu girls for sexual exploitation and fraudulent marriages. Love jihad is therefore, seen as a conspiracy theory to transform the secular Indian state to an Islamic state. However, this allegation seems to be baseless as the research found no factual basis for the same. This conspectus of the laws and the judgements highlights the need for a systemic and systematic research to really gauge the reasons of these laws, inter-faith marriages and the acceptance and lack thereof, in Indian society.

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