

Love jihad

November 30, 2020

In a world where religiosity is rising the contemporary liberal ideas seem outdated and incapable of handling dangerous issues like loving for religion. In the past few months, cases of alleged “love jihad” have been reported from different parts of the country. Hence this concept in its superficial thinking calls for debate.

In news: Uttar Pradesh Cabinet cleared a draft ordinance against forceful inter-faith conversions also called “love jihad”.

Placing it in syllabus: Society

Static dimensions

1. Special Marriage Act 1954
2. Freedom of Religion Act of Himachal Pradesh and Uttarakhand

Current dimensions

1. In news
2. What is Love Jihad?
3. How it violates Article 25
4. Does it Really Exist?
5. Why making a Law on ‘Love Jihad’ is Problematic

Content:

In news:

- The proposed law is termed as “**Uttar Pradesh Vidhi Virudh Dharma Samparivartan Pratishedh Adyadesh 2020**” (**prohibition of unlawful religious conversion**).
- It defines punishment and fine under three different heads.
- Those found guilty of **conversion done though**

“misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means” in contravention of the law would face jail term of one to 5 years, and a minimum fine of Rs 15,000.

- In case, such **conversion is of a minor, a woman from the SC or ST**, then those found guilty would have to face a jail term from three to 10 years, with a minimum fine of Rs 25,000.
- If such **conversion is found at the mass level**, then those guilty would face jail term from three to 10 years, with a minimum fine of Rs 50,000.
- It proposes that a marriage will be declared “shunya” (null and void) if the “sole intention” of the same is to “change a girl’s religion”.

Who can convert under the proposed law?

- Under the new proposed law, anyone wanting to convert into another religion would have to give it in writing to the District Magistrate at least two months in advance.
- The government is supposed to prepare a format for the application and the individual has to fill the application for conversion in that format.
- It would be the responsibility of the one going for the religious conversion to prove that it is not taking place forcefully or with any fraudulent means.
- In case, any violation is found under this provision, then one faces a jail term from 6 months to 3 years and fine of minimum Rs 10,000.

What is Love Jihad?

- Love Jihad or Romeo Jihad is an **Islamophobic conspiracy theory alleging that Muslim men target women belonging to non-Muslim communities for conversion to Islam by feigning love.**
- The movement has been described as antifeminist due to

paternalistic attitudes towards women's choice in marriage and by allegedly using women's rights as a cover for Hindu nationalism.

- The concept rose to national attention in India in 2009 with alleged conversions first in Kerala and subsequently, in Karnataka.
- The claims have subsequently spread throughout India and beyond, into Myanmar, Pakistan and the United Kingdom.
- With waves of publicity in 2009, 2010, 2011 and 2014, the allegations of Love Jihad in India have raised concerns in various Hindu, Sikh and Christian organizations, while Muslim organisations have denied the allegations.

How it violates Article 25:

- The right to conscience is enshrined in Article 25 of the Constitution along with the right to profess, practice and propagate religion.
- According to the courts, the **right to conscience and religion also means that one person's religious rights cannot infringe upon the right of another.**
- The right to conscience has also been framed independent of the right to religion which means one can be non-religious and exercise the right to conscience.
- Thus, **an individual's exercise of conscience cannot be restricted simply because it does not conform to the ethics and morals set by a religion.**

Does it really exist?

- In 2012, the Congress chief minister of Kerala, Oommen Chandy, said that during 2009-12, 2,667 young women of other faiths were converted to Islam.
- The number of non-Muslim women married into Islam is 33 times more than Muslim women married outside Islam.
- Directed by the Supreme Court, the National Investigation Agency (NIA) probed 94 cases of love

marriages in 2014 between Muslim men and non-Muslim women and suspected 23 of being instances of Love Jihad.

- In 2017, the Kerala High Court directed the DGP Kerala to investigate the cases of Love Jihad. Later, the NIA reported on the existence of Love Jihad cases.
- In 2020, the Syro-Malabar Church expressed concern over rising Love Jihad cases.

Why making a Law on 'Love Jihad' is Problematic?

- The real issue is not that marriages are done for the sole purpose of conversion, but that conversion is done for the sole purpose of marriage.
- The state cannot hope to be a saviour for women who are in love so much so that they don't think twice before converting just to marry their partner.
- On 9th April 2018, the Supreme Court delivered its judgment by reversing the Kerala High Court's judgment, where it annulled Hadiya's marriage to Shafin Jahan.

Hadiya case:

- On 24th May 2017, Justices Surendra Mohan Kuriakose and Abraham Mathew of the Kerala High Court annulled Hadiya's marriage to Mr. Shafin Jahan.
- The Kerala High Court judgement stated that a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways.
- The High Court gave Hadiya's parents custody of her.
- In response, Mr Shafin Jahan filed a special leave petition, challenging the judgement.
- On 8th March 2018, the Supreme Court set aside the annulment of the marriage and said that **the High Court had misused the habeas corpus.**
- When Hadiya appeared before the High Court, she stated that she was not under illegal confinement.
- In Hadiya's case, the High Court was guided by social considerations and it was wrong and unnecessary to go

into aspects of social radicalization in a writ of habeas corpus.

- The High Court wrongly invoked the parens patriae jurisdiction.
- **Parens patriae** is the power of the State to intervene against an abusive or negligent parent or guardian.
- The State acts as the parent of such an individual.
- The courts can invoke this role only in exceptional cases where the individual is either mentally incompetent, or underage, or has either no parent/legal guardian or has an abusive one.
- Ms Hadiya was neither mentally incapacitated nor vulnerable and had equivocally expressed her choice, and the right to choose is a constitutionally guaranteed freedom and a facet of individual identity.
- The High Court was wrong in letting parental love and concern override the right of an adult to choose who she wishes to marry.

Choice of a partner lies within the exclusive domain of an individual, and is a part of the core zone of privacy, which is inviolable. However, the State can try to protect the rights of women so that they have some legal provisions to fall back on if they later realize they married the wrong person.

Special Marriage Act 1954:

- The Special Marriage Act, 1954, is a **law which allows registration of such marriages which may not meet conditions of customary laws.**
- The **prime purpose of the Act** was to address Inter-religious marriages and to establish marriage as a secular institution bereft of all religious formalities, which required registration alone.
- It **allows any couple, irrespective of their religious/caste identities, to get married.**

- However, registration of such a marriage under the law requires the **marriage officer to first issue a 30-day public notice** with details like name, occupation, age and address about the intended marriage for invitation of objections from the public.
- The objections are limited to technical aspects like soundness of mind, age and existence of any spouse of the parties intending to register the marriage.

Procedure mentioned:

- One of the parties to the marriage has to give a notice of the intended marriage to the marriage officer of the district where at least one of the parties to the marriage has resided for at least 30 days immediately prior to the date on which such notice is given.
- Such notice is then entered in the marriage notice book and the marriage officer publishes a notice of marriage at some conspicuous place in his office.
- The notice includes details of the parties like names, date of birth, age, occupation, parents' names and details, address, pin code, identity information, phone number etc.
- Anybody can then raise objections to the marriage on various grounds provided under the Act.
- If no objection is raised within the 30 day period, then marriage can be solemnized.
- If objections are raised, then the marriage officer has to inquire into the objections after which he will decide whether or not to solemnize the marriage.

Problems with Act:

- The provisions under the Act require parties to an intended marriage to publish their private details for public scrutiny 30 days prior to the intended marriage.
- This provision violates the right to privacy of the parties under Article 21 of the Constitution.

- The requirement is also in violation of the right to equality under Article 14 of the Constitution since no other laws prescribe such a requirement.
- The notice at times becomes a reason for life threats for couples fleeing their homes and wanting to marry as per their own choice.

Freedom of Religion Act of Himachal Pradesh and Uttarakhand:

- The Himachal Pradesh Freedom of Religion Act, 2019, and the Uttarakhand Freedom of Religion Act, 2018, both prohibit conversion by misrepresentation, force, fraud, undue influence, inducement, allurement and 'by marriage'.
- There is a separate section in both laws under which, ***not conversion for the purpose of marriage, but marriage done solely for the purpose of conversion, may be declared null and void by a family court based on a suit by either party.***
- The acts have increased the punishments, criminalised marriages solemnised for the sole purpose of conversion and have made provisions to hold responsible those organisations involved in forced conversions.
- The **burden of proof** as to whether a religious conversion was not effected through force or fraud **lies on the person so converted**, or the person who has facilitated the conversion.

Mould your thought:

1. How does love jihad violate freedom of religion? Explain the salient features of Uttar Pradesh law against love jihad.

Approach to the answer:

- Define love jihad
- Write how it violates Article 25

- Write about the new UP law against love jihad
- Conclusion