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Love Jihad: Love Marriages under Social and Political Turbulence

Authored By- Vaishnavi Pratap

Abstract

This research paper aims to examine the logical backing, practicality and morality behind the concept of Love Jihad in contemporary India from a very liberal, non-conservative and arguably progressive perspective. The observations in this paper will be made on the basis of facts and circumstances of the cases that have come out since the Bill was passed by the Uttar Pradesh government. The meaning of jihad is a struggle or fight against enemies of Islam' or 'the spiritual struggle within oneself'. According to PM Narendra Modi's new India, there is a new war that has erupted; that of a Muslim man over the Hindu women and the one man who has outrightly been calling it out is the Uttar Pradesh Chief Minister, Ajay Singh Bisht or Yogi Adityanath. This paper aims to look at the constitutionality behind the concept and why it is considered criminal in India. It will therefore clarify if 'Love Jihad' is just a figment of political imagination (and one that has been used rather tactfully against the Muslim minority in this country) or not. Article 21 of the Constitution guarantees the right to marry a person of one's choosing. The Indian Constitution within itself enshrines the Right to Life. This right cannot be taken away until legislation that is substantively, procedurally, and substantively fair, just, and reasonable is enacted. One of the most significant consequences of the law is that it inhibits social transformation via marriage and reintroduces cultural barriers in a state already strongly divided along caste, religion, and gender lines.

Keywords: -

Religion, Forced-conversion, Inter-caste, interfaith, Jihad, Islamophobia.

Introduction

Out of all the various religious groups in India, Hinduism is the oldest and the most dominant religion in India, accounting for around 80% of the population, with Islam accounting for 14% and other religions accounting for the remaining 6%. The Right to "freely profess, practice, and propagate religion" is one of the most thorough articulations of the Right to religious freedom in India's constitution. However, from the late colonial era to the present, widespread conversions to minority religions in India have strained majority-minority relations and hindered the exercise of this freedom. Even today, the 19th-century discussion on religious conversion is rife with the same passion, tone, and argument. The debate's participants have made little headway in comprehending each other's assertions on the thorny question of conversion, which has resurfaced in politics, the media, and the courts. Those who oppose conversion believe that it disrupts social harmony in a pluralistic democracy, while those who favor it argue that conversion is a basic human right granted by the Indian constitution. The viewpoints have stayed unaltered for centuries now, but intense debates have gradually heightened emotions of mutual suspicion, discomfort, and animosity among Hindus, minority Christians, and Muslims. So yet, no amount of study has provided clear solutions to the conversion question.

Love Jihad At Its Essence

The early 1920s witnessed a flurry of orchestrated propaganda campaigns and popular inflammatory and demagogic appeals by a section of Hindu publicists and Arya Samaj against abductions and conversions of Hindu women by Muslim goondas, ranging from allegations of rape abduction and elopement to luring, conversion, love and forced marriages.¹ In Kerala, Karnataka, and Delhi, organizations such as the RashtriyaSwayamsevakSangh, Vishwa Hindu Parishad, Sri Ram Sene, AkhilBharatiyaVidyarthi Parishad, and Hindu Jan jagruthiSamiti have held meetings, distributed pamphlets, and even filed court cases, alleging that the organization, as part of an Islamist conspiracy, has devised plans for compulsive and deceptive religious conversions. They also claim that Muslim teenagers are receiving money from abroad to buy fancy clothes, automobiles, mobile phones, and costly presents in order to attract Hindu ladies and entice them

¹Charu Gupta, *Hindu Women, Muslim Men: Love Jihad and Conversions*, Economic and Political weekly, December 2009.

away. In the 1920s, militant Hindu assertion reached new heights, especially in the context of Shuddhi (purification movement to reclaim those who had converted from Hinduism to other religions) and Sangathan (organization in defense of Hindu interests) movements launched by the Arya Samaj and there were unprecedented communal clashes in Uttar Pradesh.² So it is safe to say that Love Jihad as a concept has been built into the Upper Caste Hindu community for centuries. There are many reasons for this that involve limited legal jurisprudence and more of social history and a deeper understanding of how patriarchy has shown a long-term effect by stripping women of their right to choose the person they want to marry. The issue with traditionalist religious fanatic families is that culture and religion are very important to them. Some people tend to lose their reasoning powers when confronted with the phenomena of conversion from Hinduism to Islam, particularly by Hindu women. The political nuances that affect the 'cultural virginity' are inextricably linked to a fiction of purity, as well as a rage about violation and invasion because to the families, not only does it become a 'stain on the family' but it also means the official breakdown from the community. Coming from a nation where women aren't allowed to raise their voices against family norms, marrying someone of another faith is the biggest sign of defiance for such families and revolution for modern-day women. Another aspect we need to pay heed to is the caste of the woman in question. From September 2015 to December 2019, out of 700 'converted brides', 619 were Dalit girls. We don't get to hear it because of the media and society's complete silence but Dalit Hindu girls are an easy target for love jihad. We also had a tremendous and unedifying dispute emerge when the Census Commissioner presented the religion-wise statistics from the 2001 Census, forgetting to mention that they could not be compared to earlier results because the 1991 Census was not performed in Kashmir, which has a Muslim majority. With a lot of aid, the Hindu Right produced an outcry over 'them' outnumbering 'us' in our own nation. This was despite the Census Commissioner's comments and despite numbers demonstrating that the Muslim growth rate was large, if not greater, than the Hindu growth rate.³ Then again judging by the flow of events there aren't many solutions at hand either.

²Charu Gupta, *Hindu Women, Muslim Men: Love Jihad and Conversions*, Economic and Political weekly, December 2009.

The Constitutionality Behind Forced Conversions.

When Justice KT Sankaran urged the police to investigate the term "love jihad," it gained new credibility in the Kerala High Court in 2009. Authorities in both Kerala and Karnataka later denied that such a scheme existed. However, the fact that it was studied provided a great support to the concept that love jihad might be a legitimate tactic.

Technically, India's population is divided into many categories, including Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), and the General category. The SC category is defined in Article 366 of the Indian Constitution as "castes, races, tribes, or parts/groups within castes, races, or tribes as notified³." The President of India has the authority under Article 341 of the Constitution to designate certain groups as SCs in regard to a state or Union Territory by public notification. In accordance with the clause, the Constitution (Scheduled Castes) Order, 1950 was enacted. A statute must be introduced by Parliament to change such notice and include or omit a group. Individuals who practice faiths other than Hinduism or Sikhism may not claim to be members of an SC group, according to a 1956 revision to the aforementioned ordinance.

In 1985, in a Landmark Supreme court case, a 3-member Bench led by then-Court of India Chief Justice PN Bhagwati ruled that those following religions other than Hinduism or Sikhism may not claim constitutional protections for SCs. The Bench remarked that the caste system is a phenomenon peculiar to the Hindu class system and social hierarchy and upheld the legal requirements stated in the 1956 ruling.

As already established by the article, the history of anti-conversion laws trace back into Indian history as far back as the pre-independence era however, it was only post-independence that India saw its first legislation, 'Orissa Freedom of Religion Act, 1967, the law that prohibits 'forced conversion'. Naturally, the law was challenged in front of the Orissa High Court in the case of Yulitha Hyde v. State of Orissa (**AIR 1973 Ori 116**) wherein the court held that the Law was a violation of Article 25 and struck it down.

Article 25 of the Indian Constitution recognizes the basic freedom to profess, practice, and promote religion, as well as the equality of all religions in the eyes of the law. Article 26 puts the right and freedom to administer religious issues into action (with restrictions based on public order, morality, and health). Articles 25 and 26 apply to rituals and are not limited to doctrinal abstractions. This

³ Article 366 Indian Constitution.

was reaffirmed by the Supreme Court in the 1954 *Shirur Mutt*⁴ (Lakshmindra Thirtha Swamiar of Sri Shirur Mutt) decision, which acknowledged that "Religion was a question of faith rather than theistic belief"⁵. Usually, professing religion is a public confession of religious identification.

In the case of *Perumal Nadar v. Ponnuswami*⁶, the Supreme Court recognized the significance of preserving a legal procedure for conversion in 1971. It noted that a "theoretical loyalty" or "bare proclamation" of wanting to become a Hindu is inadequate. A "bona-fide purpose" followed by proof of conversion, on the other hand, may "effectuate conversion."

However in 1977, in the case of *Rev. Ft Stanislaus v. State of Madhya Pradesh* (1977 AIR 908) the constitutional legality of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, was challenged in the Madhya Pradesh High Court, as was the constitutional validity of the Orissa Freedom of Religion Act, 1967, in the Orissa High Court. The two Acts make forceful conversion illegal and criminal. The Supreme Court in hearing the challenge to the anti-conversion laws in Madhya Pradesh, observed that such a law was specifically prohibiting "Forced Conversion" and doesn't prohibit such 'legitimate conversions' that have been prior informed to the district magistrate. The court distinguished between the freedom to spread one's religion or beliefs and the right to convert. Article 25 of the Constitution guarantees the former. Conversion is not protected in this way. In close connection to the same. In close connection to this, the High Court of Himachal Pradesh struck down the Himachal Pradesh Religion Act, 2006 which imposed criminal penalties on everyone who converted their religion without prior intimation to the government.

Even through the recent developments in Love Jihad cases and the rationale that the courts have applied, it becomes fairly evident that the courts have utilized the right to conscience, which grants a citizen the ability to make free decisions pursuant to the laws of the nation, to enable legislation prohibiting conversions. In this regard, the courts have stated that in order to preserve an individual's right to conscience, it is vital to guarantee that conversion occurs of free choice, without pressure or incentive.

⁴ 1954 AIR 282, 1954 SCR 1005.

⁵ 1954 AIR 282, 1954 SCR 1005.

⁶ 1971 AIR 2352, 1971 SCR(1) 49

Conclusion

In my opinion, firstly, the Hindu right wing's erroneous assertion that there is a "Love Jihad" organization driving Hindu women to convert to Islam through phony displays of love is akin to a campaign in North India in the 1920s against purported "abductions". Whether in 1920 or 2009 or 2021, Hindu patriarchal beliefs appear to be well ingrained in campaigns designed to hunt down-converted women. It sets a horrible image of docile victimized Hindu women at the hands of unfathomable Muslim men and any chance of women expressing their inherent right to love and choice is rejected. Secondly, what people need to understand is that it is normal for dissent to arise out of such situations because as stated before, people hold their religion and culture to their heart. Women won't stop marrying just because the person they chose to get married to doesn't follow the same religion.

Our religious scriptures and cultural teachings were framed over centuries ago and we have progressed as a society through those centuries. Therefore, it logically doesn't make sense to limit basic rights and liberties over 'hurt sentiments' because, in a secular democracy where people have a legal right to object, it is practically impossible to keep everyone happy on the uncommon and volatile ground of religion. Inter-faith marriages were always an issue because of only two reasons- the first being the dogma of people and the second being the influence of the press and social media. It's only when the media influences the public and doesn't let their ideas evolve that issues like these are mishandled. Similarly, it is only after they (the influential) had given such marriages a religious identity, fanatical institutions such as Sri Ram Sena, Vishva Hindu Parishad, and Sangh Parivar continued to harass families over their daughter's marriage.

An individual's right to exercise conscience cannot be limited just because it contradicts religious ethics and values. The right to conscience cannot be restricted if an individual believes a religious principle violates his or her ethical convictions and if the individual's ethical values are not in violation of laws or in the way of restricting the exercise of another person's rights.⁷

All of this is fueled by the common 'fear' that the number of Hindus were decreasing (in a country where they are the majority). However, despite the authorities' and the government's insistence that these worries were unfounded, vigilance against love jihad became an important component of the

⁷SruthisagarYamunam, scroll.in. <https://scroll.in/article/977649/bjp-wants-to-stop-love-jihad-but-its-real-aim-is-undermining-right-to-religion-and-liberty>

discourse against the supposed Islamization of Kerala, Karnataka, parts of Delhi, UP and MP. Throughout this paper, I have also tried to contribute to the worldwide study of Islamophobia and to enhance our understanding of the gendered imaginaries of anti-Muslim nationalist formations throughout the world. My primary arguments throughout the paper have revolved around the underlying causes of Love Jihad. The resolution to this particular issue is froth with complications arising out of the dichotomy of gaining public votes and doing what is right. When there are too many people believing that a certain practice is correct and are voting for leaders who get policy framers with just as narrow thoughts, it takes the equivalent of a cultural shift to set the line straight again.

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