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RELIGIOUS CONVERSIONS AND INTERFAITH MARRIAGES - A CONSTITUTIONAL ANALYSIS OF ANTI-CONVERSION LAWS

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Abstract

The prohibition of interfaith weddings as a method of converting one of the partners from one religion to others is a regressive and plainly unconstitutional aspect of recent anti-conversion legislation passed by several States. Laws prohibiting conversions acquired by fraud, force, or allurement have existed for some time, but recent enactments or modifications have included "conversion by marriage" to the list of prohibited conversions. These legislations are often referred to as 'freedom of religion' laws in certain states. When it comes to interfaith weddings, the Gujarat High Court made it plain that the "rigours" of the state legislation passed earlier this year won't apply to unions that don't entail fraud, coercion, or allurement in an interim decision safeguarding parties from unnecessary harassment. Unless there were any of these unlawful components, criminal procedures have been halted against individuals who have married across religious beliefs. According to a Bench, the State government's argument that inter-faith weddings that do not entail fraud or force and lead to conversion are exempt from the criminal provisions of the Gujarat Freedom of Religion (Amendment) Act, 2021, was denied. According to this viewpoint, converting "by marriage" or "by getting a person married" or even helping someone get married is illegal under the amendment's language. In the court's opinion, "a simple reading of Section 3 would suggest that any conversion for the purpose of marriage is likewise illegal. " That Hindutva supporters still believe in ancient rules aimed at restricting interfaith marriage is unfortunate. Many people still think that inter-faith weddings are aimed at religious conversion, have a negative effect on public order, and usually entail force or deception, even though the Supreme Court has made it plain that doing so is no longer constitutional. Constitutional courts would not consider such weddings to be public order violations and making their solemnization a basis for anti-conversion legislation prosecution was unlikely to succeed, according to secularists and legal experts. Article 21 of the Indian Constitution is clearly violated by Gujarat's laws, which "interfere with the subtleties of marriage" and a person's freedom to choose marriage. The ruling of Supreme Court in Shafin Jahan vs Asokan K.M established the concept that Article 21 guarantees the freedom to marry whoever one chooses. It's a major judicial rebuke of states that are trying to incite communal strife by passing questionable anti-conversion laws that the ruling halting criminal proceedings represents.

Keywords: Inter-faith marriages, Anti-conversion laws, Judgement, Special Marriage Act, freedom of religion, conversion laws, Religious Conversions, Constitutionality.

A. **Introduction**

The Prohibition of Unlawful Religious Conversion Ordinance was approved last year in Uttar Pradesh, India's ninth state with an anti-conversion legislation. Forcing people to stay in their current religious beliefs is one of their declared objectives. The Special Marriage Act of 1954 in India, on the other hand, regulates civil unions between people of various religions. The SMA seems to encourage secularism on the surface. Even anti-conversion law, on the other hand, purports to preserve people's religious identity. Both pieces of legislation are intertwined in this way. Anti-conversion legislation exacerbates the problems faced by couples who want to marry beyond their faith since the SMA failed to achieve its goals.¹

As a consequence, Articles 14, 19, 21, and 25 of the Constitution, which are essential to a person's progress, are hampered in both cases. These rights cannot be revoked unless there is an emergency involving national security, public safety, or other issues of public importance. To be more specific, Article 21 asserts that no one may be denied of their life or liberty unless the process provided by law is followed. As the right to privacy is inextricably linked to one's identity, it follows that Article 21 protects it. If the state's intrusion is not just, fair, and reasonable, it cannot be justified.

I. **Article 21**

The SMA stipulates that a 30-day notice of an interfaith marriage must be provided to the subdistrict magistrate. As soon as the SDM has completed his investigation, he notifies the couple's home (i.e., family) and posts a notice at the offices of the relevant authorities as well. This is intended to allow anybody in the public to voice their opposition to the proposed union on particular reasons. However, marriage is also a private matter, and the Special Marriage Act's

¹ "Panadan, Davis. "Anti-conversion laws a fraud on the constitution and democracy of india." Journal of Dharma 35, no. 2 (2010)."

procedure violates the privacy of a couple at every stage. It infringes on their dignity and liberties since their decision to have a family is made public. A 30-day (or 60-day) notification of intent to change one's faith is also required by certain anti-conversion legislation. This is not uncommon.

For example, in Uttar Pradesh, police are tasked with investigating and determining the motives for conversions. Anyone who has undergone conversion is required to show up in front of an official figure to verify his or her identification. Even his or her kin may file a police report to stop the conversion. As a result, a person must declare his or her conversion desire and other personal information at each stage. As a result of the shackles of caste identification, some Hindus have turned to Buddhism. Encouraging an inquiry into a person's religious beliefs is a violation of a person's dignity and liberty, as well as their article 21 rights.²

II. Article 14

Article 14 states that the state is responsible for ensuring that everyone is treated equally under the law. The state, on the other hand, has the power to provide disadvantaged groups preferential treatment in order to even the playing field. That's why we've come up with a categorization that makes sense and can be evaluated to see whether it has "intelligible differentia," is connected to its stated purpose, and doesn't seem completely out of nowhere. Interfaith spouses must present three witnesses to attest their marriage under the SMA, in addition to previous notification. The notification requirement does not apply to individuals married under personal laws, and just two witnesses are needed.

Since a result, Article 14 is violated by these regulations, as there is no basis for distinguishing between couples married under personal laws and those married under anti-conversion legislation. Before everything else, withholding information from the public hinders the state's ability to accomplish any sane objective. As a result, these rules are clearly arbitrary and lead to an illogical categorization.

Additionally, anti-conversion legislation unfairly targets first-time converts by excluding them from the same protections that apply to those who revert to their original faith. It violates the

² "Article 21: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 14 rights of first-time converts since there is no reason to distinguish them from others. In addition, there is no logical connection between governmental objectives and reasonable behavior.

III. Article 19

Article 19 guarantees the freedom of the press and right to free speech. Some courts have compared it to Article 19's freedom to choose of an individual. As soon as it asks for objections to interfaith weddings, the SMA takes away this option by giving families a voice. It also robs individuals of their freedom to express their preferences for romantic partners. Articles 4, 5, and 7 of the SMA were recently struck down by the Allahabad High Court for infringing on the rights of individuals to autonomy, liberty, and privacy. However, the Supreme Court has yet to rule on the SMA.

These regulations restrict someone's ability to change their faith by telling them what they may and cannot do. According to the Uttar Pradesh law, a "mass" conversion is defined as two or more people changing their faith, therefore it is a significant occurrence. A family's conversion will be considered a mass conversion event, and the state will be able to intervene, thus nullifying the Article 19 rights of the whole family.³

IV. Article 25 – “Freedom of conscience and free profession, practice and propagation of religion”

As long as public order, health, and morals aren't jeopardized, Article 25 protects religious freedom for everyone. Economic, political, and secular activities connected with religion may be regulated by the state via legislation. Certain anti-conversion legislation treats conversion for the purpose of marriage as a separate offence. Whether or not permission is sought is of little consequence - government intervention is unavoidable in such situations.

Restriction of the ability to marry a non-believer compromise both religious freedom and the right to marry. Religious freedom involves the freedom to spread and educate people about a belief system. Anti-conversion legislation, on the other hand, equates the claim of divine wrath with the use of coercion.

³ “Article 14 in The Constitution Of India 1949-Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”

Even the Supreme Court, unfortunately, does not have the same views as our forefathers who drafted the Constitution and incorporated these protections. This case, *Rev. Stainislaus vs State of Madhya Pradesh & Ors on 17 January, 1977*⁴, maintained an anti-conversion legislation that had been thrown down by the High Court for lack of legislative competence and fundamental rights violations.

Even if Article 25 permits the promotion of one's faith, the Supreme Court has ruled that a person's freedom of conscience prohibits them from converting to another. This ruling implies that converting someone to a new faith is always accompanied by coercion. After a petition to the Supreme Court, Allahabad High Court decided to send the case back to the lower court in Uttar Pradesh. It will all come down to whether the Supreme Court chooses to go back and modify its earlier ruling.⁵

B. Social impact of The Special Marriage Act (SMA), 1954

The Special Marriage Act offers a venue for interfaith unions that would otherwise be prohibited under personal rules of conduct. Although relatives have sufficient opportunity to harass the couple or carry out "honour" murders because of the disclosure process, this isn't always the case.

Women who reject patriarchal conventions and take control of their own lives benefit most from such measures. Couples choose to convert after marriage rather than go through the lengthy and laborious formalities of the Special Marriage Act because they believe personal law procedures to be easier to understand, more accessible, and more familiar. In a strange twist of fate, they may also provide greater personal space for couples. This loophole is used by anti-conversion legislation to allow vigilante groups and police authorities to harass couples who are contemplating conversion since it would be "forceful." Minority faiths are often persecuted under these laws because the majority Hindu population and Hindu culture are seen as being threatened by conversion. This is particularly true for men who practice minority religions.⁶

⁴ 1977 AIR 908, 1977 SCR (2) 611

⁵ "Freedom of Religion in India (Art. 25)- Article 25 of the Constitution guarantees freedom of religion to all persons in India. It provides that all persons in India, subject to public order, morality, health, and other provisions"⁶ "Huff, J. A. (2009). Religious freedom in India and analysis of the constitutionality of anti-conversion laws. Rutgers JL & Religion, 10, 1."

I. A Way Forward

Today's right to privacy makes the Special Marriage Act's strict requirements obsolete, and they are at odds with the concept of transformative constitutionalism, which recognizes societal change.

Individuals are at the center of the contemporary concept of a fair society, with laws developed through the lens of human dignity. The Special Marriage Act must be easier to use. Its provisions need to be updated to reflect current events.

Anti-conversion legislation, they say, would deter conversions carried out under the guise of marriage. There is a misconception here: the need is to correct flaws in the state marriage act, making it simpler for couples to marry while maintaining their religious beliefs. Many people are now left with no choice than to convert.⁷

II. Creation of an Integrated Community

In contrast to anti-conversion legislation, the SMA was passed to create a safe environment for interfaith weddings. Both pieces of legislation, on the other hand, have some unsettling consequences for society. There are holes in the SMA that anti-conversion legislation exploits, but the SMA itself breaches basic human rights. Reforming the SMA requires looking at it from the perspective of an individual rights instead of from a religious one. As a result, the Indian community will be more integrated.

C. Anti-Conversion Laws and their Constitutionality- The Idea of Religion and Indian Viewpoint

While the western world views religion as a monolith, this is not the case in India. As a matter of fact, religion in India encompasses all of these and more. As a result, religion is a major political issue that has a significant impact on election outcomes. The cultural and constitutional perspectives of India must be understood before delving into the intricacies and dynamics of

⁷ "Jackson, Vicki C. "Constitutional law in an age of proportionality." Yale Lj 124 (2014): 3094"

religion in the country. In reality, India's culture thrives on variety, which adds a certain luster to it. In India, religion has a solid foothold, with customs that vary by area.

Examples include Muslim-majority Jammu and Kashmir, Sikh-majority Punjab, Buddhist-majority Sikkim and Buddhist-majority Ladakh and Nagaland. Christian-majority Nagaland and Meghalaya and Buddhist-majority Mizoram are found in Indian Himalayan States such as Sikkim and Darjeeling. Muslims, Sikhs, Christians, Buddhists, Jains, and Zoroastrians all have sizable numbers in India. In India, Islam is the most prevalent minority religion. Indian Muslims are the world's third-largest Muslim community, comprising about 14% of the country's total population.

As stated in Article 25-28 of the Indian Constitution, India is a secular state. The provision of Religious Freedom as a basic right to India's people further strengthens the concept of secularism. The idea of 'Secularism' had not been included in the Constitution from its creation, but the 42nd Amendment, passed in 1976, added it to the document's fundamental framework. As a consequence, in the Constitution's Preamble, the term "secular" was inserted.⁸

D. History of Anti-conversion Laws

It's no secret that India is a nation of numerous religions and customs. Four main global religions have their origins in India, including Hinduism, Buddhism, Sikhism, and Jainism. There are 79.80 percent Hindus in India, 14.23 percent Muslims, 2.30 percent Christians, 1.72 percent Sikhs, 0.70 percent Buddhists and 0.37 percent Jains, according to census statistics from 2011.

The Indian subcontinent has long enforced anti-conversion legislation. The Hindu princely kingdoms, particularly in the late 1930s and 1940s, introduced the legislation restricting religious conversions during the British Colonial era. Several anti-conversion laws were proposed in Parliament shortly after India gained independence, but none passed.

First, in 1954, Registration Bill and the Indian Conversion Regulation was presented, calling for the enforcement of missionary license and conversion registration with government authorities. The lower house of parliament's members rejected the measure because it lacked majority support. After the Backward Communities (Religious Protection) Measure was defeated in the Senate in 1960, another bill was presented by the Democratic Party. Bill pursued to avert Hindus from

⁸ "Huff, James Andrew. CONSTITUTIONALITY OF ANTI-CONVERSION LAWS."

changing to 'non-Indian religions,' including Islam, Christianity, Judaism, and Zoroastrianism, as defined in the Bill, and the Freedom of Religion Bill of 1979 sought to 'officially curb inter-religious conversion, Parliament also failed to approve these measures as a result of a lack of support among its members.⁹

I. The Initiatives

There are laws passed at the state level called 'anti-conversion laws,' which govern religious conversions which are not entirely voluntary.

Orissa & Madhya Pradesh were the first states to pass such legislation after many unsuccessful efforts at the Union and Central levels. To begin, anti-conversion legislation targeted Islam who sought in the 1980s, but as time went on and their links to Western colonization and the role that active proselytizing plays in becoming a good Christian became more widely known, so did Christianity. Despite minor differences, the substance and structure of state laws are very similar throughout all 50 states. To limit the capacity of groups and individuals to convert "from the faith of their ancestors," these laws seek to safeguard the "weaker" or more readily "influenced" sections of society—namely women, infants, backward castes and untouchables—often in the name of protection. Essentially, the goal of all of these regulations is to keep people from converting to Christianity "by force" or "fraudulent" methods, or via "allurement" or "inducement. As a result of legislation, there are consequences for breaking the rules that may vary from monetary fines to jail time. Women, minors, and members of schedule tribes or schedule caste (SC/ST) face harsher penalties under certain of the rules.

E. State-Level Legislations

I. Orissa and Madhya Pradesh

There is an *Orissa Freedom of Religions Act from 1967* that says that no one intend to convert anybody from one religious' faith to another by deception, force, allurement or enticement, nor

⁹ "Osuri, G. (2012). Religious freedom in India: Sovereignty and (anti) conversion. Routledge."

shall anyone abet any such conversion. If this legislation is broken, you may face up to a year in jail or a Rs 5,000 fine. The maximum punishment is two-year jail and an increased fine of Rs 10,000 for minors, women, and anyone from a scheduled caste or tribe. It was upheld by the Orissa High Court as illegal, since the state assembly lacked authority to legislate on religious issues. Additionally, Madhya Pradesh passed the *Madhya Pradesh Swatantraya Adhiniyam 1968* legislation that year.

This contradicts Orissa High Court's ruling that the Act infringed certain Christians' basic rights under Article 25. The Madhya Pradesh High Court rejected this appeal and agreed with Orissa High Court's ruling.¹⁰

II. Arunachal Pradesh

After the Madhya Pradesh and Orissa High Court cases, many anti-conversion legislations were enacted. In 1978, this legislation was passed in many states, including Tamil Nadu, Arunachal Pradesh and Andhra Pradesh. *The Arunachal Pradesh Freedom of Religion Act, 1978*, contains the state's anti-conversion laws. Orissa & Madhya Pradesh also have similar legislation. President Jimmy Carter signed off on the legislation on October 25 after warnings that indigenous faiths were under attack. However, since the government has not yet drafted the regulations necessary to put it into effect, it has yet to be implemented.

III. Chhattisgarh

In November 2000, the Madhya Pradesh state of Chhattisgarh was created by dividing it into two parts. As a result, Chhattisgarh kept the anti-conversion legislation from Madhya Pradesh and enacted them as the *Chhattisgarh Freedom of Religion Act, 1968*. It also kept the procedures for putting the Act into effect that were included in the original legislation. The state government modified this Act to make it stricter later in 2006, though.

IV. Tamil Nadu

¹⁰ "Teater, K. M., & Jenkins, L. D. (2019). Religious regulation in India. In Oxford Research Encyclopedia of Politics."

As per the *Tamil Nadu Prohibition of Forcible Faith Act 2002*, no one may convert or attempt to convert anyone from one religion to another by force or allurement and any fraudulent means. However, the Tamil Nadu government headed by Jayalalitha revoked the legislation shortly after the Bhartiya Janata Party alliance lost the 2004 elections.

V. Gujarat

Freedom of Religion Act 2003 was enacted by Gujarat's Legislative Assembly in March 2003. The Dharam Swatantrata Vidheya-Freedom of Religion Act was the official name of it. The Act was hailed by then-State Chief Minister and current Prime Minister Narendra Modi as one of his government's most important 'achievements' during its first year in power. Conversion by threat or enticement was against the law.

VI. Uttarakhand

According to the Uttarakhand's High Court ruling on from 2017, the state government should pass an anti-conversion law similar to that of Madhya Pradesh. Although this was the first time the Court has examined an inter-religious marriage case, it observed that in some of those instances conversion was a simulation performed to enable marriage. There would be no harm done to people's religious beliefs by passing legislation similar to the state's 1968 Madhya Pradesh-Himachal Pradesh Freedom of Religion Act or Freedom of Religion Act in order to curtail this trend. The state administration presented the measure to the State Assembly on March 21, 2018, four months after the High Court issued its ruling. This Act of 2018 was signed into law by the Governor after the measure was approved by the Assembly on April 18th, 2018.¹¹

VII. Himachal Pradesh, Rajasthan and Jharkhand

On February 18, 2007, *Himachal Pradesh's Freedom of Religion Act*, an example of other Indian states' anti-conversion legislation, went into effect. *Rajasthan Dharma Swatantraya Bill, 2008* was previously passed by the Rajasthan legislature in 2006, but it failed to obtain the assent of the state's governor at the time, but it was again approved by the legislature in 2008. *Jharkhand*

¹¹ Abeyratne, Rehan Aindri. "Privileging the Powerful: Religion and Constitutional Law in India." *Asian Journal of Comparative Law* 13, no. 2 (2018): 307-331.

Freedom of Religion Bill, 2017, was approved by the Jharkhand Legislative Assembly on August 12, 2017.

VIII. Uttar Pradesh

According to the UP Government, on November 28, 2020, *the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020* was enacted, which is currently a much-discussed legislation and is regarded as a law against Love Jihad. In addition to other sanctions, this Ordinance imposes jail time of up to ten years for those who violate it. It aimed to convert people to Christianity in two situations. In the first place, circumstances involving fraud, deception, or coercion are not particularly troubling since comparable rules may be found in other current State statutes from other States as well. As opposed to the second situation, which deals with conversions 'done only for the sake of marriage. If a marriage is only for the purpose of illegal conversion or vice versa, then Section 6 deems the marriages invalid and unenforceable. This is a topic that is rife with disagreement.

F. Case Laws

1. Shafin Jahan v. Asokan K.M and ors 2018, Case Analysis

A. Case Summary

Respondent No. 9 Hadiya alias Akhila had earned a degree in homoeopathic medication and was enrolled in an internship program at a university in Salem when she was arrested. Asokan (Respondent No. 1) learned that Akhila had went to institution wearing a 'pardah' and had changed her religion. He became sick as a consequence of this. The moment Hadiya heard the news, she ran to her friend's home in Salem, but she never arrived. When her father inquired about Hadiya, he was informed that she had fled. Concerned about his daughter's disappearance, the father went to the police.

Eventually, the father took legal action after learning that the police investigation into the incident had not progressed and categorized a writ petition for habeas corpus with the Division Bench of the Kerala High Court. Following her appearance in court, Hadiya was charged as a Respondent

after submitting an implement application. On top of that her father and the police had been informed, she also submitted an affidavit detailing the events leading up to her leaving his home. In addition, Hadiya petitioned the Kerala High Court for protection against police abuses via a writcase. After concluding that Hadiya had enrolled in a dormitory to continue her studies and was not being held against her will, the High Court dismissed the case. Hadiya then withdrew her writ petition from consideration.

According to the writ suit, Hadiya's father claims his daughter was forced to convert and is now in danger of being taken out of the country. It was ordered by the High Court that Hadiya be placed under constant monitoring to make sure she did not flee the country. According to Hadiya, who appeared before the Court, she did not have a passport and would not be transported to Syria. Hadiya informed the High Court that she had wedded Shafin Jahan, i.e., the Appellant, during the course of the proceedings. With regards to the marriage's behavior, Kerala High Court used its *parens patriae* jurisdiction and dissolved it, stating that "a girl of 24 years is weak and vulnerable, susceptible of being exploited in various ways" and it was up to them to protect her. The marriage was thus nullified. In addition, the High Court ordered that she be placed under ongoing monitoring to protect her. In order to learn more about the Appellant and other people engaged in the marriage's behaviour, an investigation was ordered. The Appellant took issue with the High Court's decision and appealed it all the way to the Supreme Court.¹²

B. Issue

Do you think it is fair to ask the High Court to grant habeas corpus and to dissolve the marriage of Appellant and Respondent No. 9?

C. Arguments

- There are no arguments offered by the Appellant in this decision.
- When it came to preventing radicalization in an adult, the Respondent argued that the High Court was warranted in using its *parens patriae* authority.

D. Judgement

¹² "Kaur, N. (2019). Asokan KM v. The Superintendent of Police & Ors.(2017) 2 KLJ 974. Shafin Jahan v. Asokan KM(2018) 16 SCC 368. Jindal Global Law Review, 10(2), 331-336."

Respondent No. 1 will be required to show up in court with his child, Hadiya, as a consequence of the Supreme Court's decision (Respondent 9). Hadiya's desires were taken into consideration by the Court, which directed that she be admitted into the Medical University in Salem, where she intended to finish her internship, and also that the Kerala State Government make all necessary arrangements for her transfer to Salem.

"Expression of choice is a basic right under Article 19 and 21," the Court said further. Because Hadiya had "come before the High Court and declared that she was not under unlawful detention," the Court concluded that the High Court lacked jurisdiction under Article 226 and had instead been influenced by Respondent No. 1's allegations. "A 'just' way of life" or "a proper' path of living" for Hadiya cannot be decided by the Court because of parental concerns, according to the ruling. She is completely in charge of her own life." To make matters even worse, the High Court erred by drawing attention to the dangers of welfare concerns and social radicalization in an order granting writ of habeas corpus, and any suspicions about future criminal activity or welfare concerns were outside the scope of the order, which belonged to the State.

According to the court, each individual will have a constitutional right choose whether or not to express personal emotions with someone within or outside of marriage. It was held by the Union of India that independence is the ability for a person to make decisions about important life matters, and that the intersection between one's psychological integrity and confidentiality entitles a person to freedom of opinion and self-determination marriage laws, parenthood, and sexual orientation, and that these freedoms are integral to a person's dignity, and that

2. K.S. Puttuswamy v. UOI Case Analysis

A. Case Summary

After receiving a favorable ruling from other Supreme Court benches, Puttaswamy sued the Union of India (the govt of India) before a Supreme Court bench of nine judges. The bench was formed on the suggestion of the Constitutional Court in order to determine whether the right to privacy was expected as a distinct and separate fundamental right following the verdict from the other Supreme Court benches.

Most recently, a court challenged the government's Aadhaar plan (a universal biometrics-based identification card) that would have made it obligatory for citizens to use government services and benefit from the government programs. Supreme Court justices heard the case, which alleged that the plan infringed people's right to privacy. For India's Union government, however, the Attorney General said, there is no explicit guarantee for privacy in the Indian Constitution. Observations given in *M.P. Sharma v. Satish Chandra* (an eight-judge bench) and *Kharak Singh v. Uttar Pradesh* were the foundation for this argument, according to him (a five-judge bench). The dissenting opinion in *Kharak Singh* was upheld by a later eleven-judge panel, which ruled that basic rights should not be seen as separate, unconnected rights. In subsequent judgments, the Supreme Court's smaller benches explicitly acknowledged the right to privacy, which drew on this precedent.

As a result of this, the Constitution Bench decided that a nine-judge bench was required to assess whether the Constitution included a basic right to privacy.

The petitioner told the nine-judge panel that this right was a stand-alone right protected by the Constitution's Article 21 protection of the right to life with dignity. According to the Respondent, the Constitution only recognizes personal freedoms that may include a limited right to privacy. It heard arguments just on nature of fundamental rights, the interpretation of the Constitution, as well as the philosophical and theoretical foundations of the right to privacy in the United States.

Judgment

As well as being ancillary to other liberties granted by the Indian Constitution, India's Supreme Court's nine-judge panel found the right to privacy legally protected. For more than two decades, retired High Court Judge P. Puttaswamy has opposed the government's plan for an obligatory identification card that would use biometrics to identify its bearer. It was claimed by the Government that the Constitution didn't provide for any special protection for the right to private information. "No individual shall be deprived of his life or personal liberty except pursuant to process provided by law," states Article 21 of the U.S. Constitution, according to the Supreme Court. For instance, legislation criminalizing same-sex partnerships, including prohibitions on meat and alcohol use in several States of India, is expected to face constitutional challenges in the wake of this historic decision. Observers also anticipate that the Indian government would put in

place a data protection framework to safeguard citizens' privacy. In addition, privacy advocates will likely use the case to further the constitutional discussion in other nations on privacy.¹³

3. Shakti Vahini v. Union of India Case Analysis

A. Case Summary

To put an end to honour killings in India, the court in *Shakti Vahini v Union of India* handed down rules that the government must follow if it wants to succeed. Homicide committed by family members because the perpetrators believe the victim violated communal or religious values, resulting in shame or disgrace for the whole family, is known as an honour killing. Choice-making is a crucial aspect of freedom and dignity that cannot be separated. To put it another way, as French philosopher and scholar Simone Weil stated, "Liberty is the power to choose."

When a person's freedom of choice is trampled upon in the sake of class pride, and their physical form is regarded with utter contempt, a chilling effect spreads across society. Marriage of inter-caste is not prohibited under the Hindu Marriage Act or any other legislation, according to the Supreme Court in *Lata Singh v. State of Uttar Pradesh*. This is a democratic and free nation, the court said, therefore a person may marry whoever they choose after they become a major.

B. Issue

Should family elders be permitted to murder young people who marry against their better judgement and against the grain?

C. Arguments

Petitioner's arguments Petitioners were happy since the IPC does not deal with honour killing in an acceptable manner. Khap panchayats have no remorse or remorse when it comes to doing criminal acts. In addition, crimes like honour murders, according to the argument, are in violation of Art 21. They argued that honour is more important than the will of two consenting adults, and as a result, they were treated inhumanely as a result. The statement of the respondent To address

¹³ Bhandari, V., Kak, A., Parsheera, S., & Rahman, F. (2017). An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict. *IndraStra Global*, (11), 5.

honour crimes, the Union government has said that it is collaborating with state governments to either modify the IPC or create new laws. In addition, the 'The exclusion of interfering with the Freedom of matrimonial Alliance Bill' is being considered, according to the submission.

D. Judgment

Two adults do not need the permission of their families and elders to be married, according to the court in this instance. The Khap panchayat, or any other organisation, may not try to stop them from marrying one other. A person's right to freedom of choice is guaranteed by our humane constitution. "Class honour, however perceived, cannot suffocate an individual's decision." According to the SC's reference to the Law Commission's 242nd report, Khap panchayat-ordered crimes aren't the only kind that have catastrophic consequences. It falls under the category of crimes motivated by honour. Attempts to stifle a person's decision to marry for love are prohibited by law.¹⁴

4. Lata Singh v Union of India Case Analysis

A. Case Summary

In terms of Indian law, the Lata Singh v. State of Uttar Pradesh judgement marks a watershed event in recent history. An individual by the name of Lata Singh petitioned the Hon'ble Justices Markandey Katju and Ashok Bhan, JJ. under Article 32 of the Constitution to have her right to marry a person of her choice against her will enforced, and they approved her request. The Supreme Court decided in her advantage, and as a consequence of that decision, the police were obliged to protect her.

The "Hadiya case" is a landmark decision by Hon'ble Justice D Y Chandrachud in the issue of Shafin Jahan vs. Asokan K.M. and Ors., in which he upheld the Constitution of India. In India, it was a landmark decision in the fight for women's right to marry whoever they choose. In the instance of Hadiya, the lady is Hindu, but she is married to a Muslim, which is unusual. As a consequence, she converted to Islam and changed her name to Sharifa. The Kerala High Court

¹⁴ "Tomar, Sakshi, and Legal Edge Tutorials. "Case comment: Navtej Singh Johar & Ors. Vs. Union of India & Ors." (2019)."

granted him habeas corpus as a consequence of his plea, which he filed under Article 226 of the Indian Constitution, resulting in his release.

Hadiya's parents filed a lawsuit against her husband, claiming he was an adulterer. Despite her age of 25, the High Court maintained her father's right to custody and granted it to him. Because most people in India are unaware of women's right to choose and consent in marriage, the rights of Indian women are still largely unaddressed. According to Article 12, both men and women should have the right to marry when they reach marriageable age.

Considering the reasons presented by both parties, the Supreme Court on March 8th found that the High Court erred in its judgement while granting the writ of Habeas Corpus. Facts show that before coming in court, the appellant had acknowledged her marriage on November 27th, 2017. The High Court's decision and order were overturned, and the appeal was granted.

The Supreme Court confirmed Hadiya's marriage to Shafin Jahan and handed down its verdict in Hadiya's favour, thus the High Court's judgement was deemed illegal by the Supreme Court. On April 9th, 2018, it handed down a judgement outlining the factors that led to that outcome. Fundamentally, it concerned with people's freedom of religion, choice of spouse, and choice of life partner. To have one's Fundamental Rights safeguarded, a person may use Article 226 of the constitution's Article 32, which stipulates constitutional remedies.

It was a case in which the petitioner had resided with her brother, and after attaining the age of adulthood, she made the decision to leave the home on her own in order to marry a man of her choosing who belonged to another caste. She and her husband were married at Arya Samaj Mandir and also had a daughter together; nevertheless, her brothers were against to her marriage and tormented both their family and the husband's family. The husband's family were wrongfully implicated in a case and spent many days in jail as a result. The court accepted Lata's plea and ordered her to be protected by the police, saying that she had the right to choose her life partner freely. This story illustrates how people are killed in the name of caste honour despite the pain they face if they marry outside their caste.

B. Issue

To what extent is the Writ Petition filed under Article 32 by the Petitioner to grant certiorari/mandamus and to quash Sessions Trial No. 1201 of 2001 in sections 366 and 368 of the Indian Penal Code, 1860 stemming from FIR No. 336 of 2000 maintainable?

C. Facts of the present case

The petitioner is a recently graduated young lady. Her master's degree in Hindi was still pending when she met him at Lucknow University. She's now twenty-six years old, nearly twenty-seven. She moved in with her brother Ajay Pratap Singh after their parents died suddenly at LDA colony. In 1997, while still living with her brother, she completed her intermediate education.

The petitioner claims that on November 2, 2000, she voluntarily left her brother's home and married Bramha Nand Gupta at Arya Samaj Mandir in Delhi, where they had an unmarried child. The petitioner's brother reported his sister missing to the Sarojini Nagar Police Station in Lucknow on November 4th, 2000. After filing a complaint, the police detained two of Lata's husband's sisters, as well as her spouse, her husband's husband, and Lata's husband's cousin.

It is further claimed that the petitioner's brothers, Shashi Pratap Singh, Anand Pratap Singh, and Ajay Pratap Singh were dissatisfied with the decision to have their sister marry outside their caste. Because of this, they reportedly went to the husband's family home and assaulted his mom and uncle before throwing furniture and other things out of the house and locking it with a lock that they had made themselves. The petitioner's partner's brother was allegedly kept in a room for 5 days without food or water by the petitioner's husband's siblings, according to the petitioner.

The petitioner's siblings allegedly threatened to murder her husband and other members of her family, according to the complaint. Because of Lata's brothers' threats and violence, her in-laws were reluctant to go to Lucknow. Her brothers were enraged by Lata's inter-caste marriage with her husband, Bramha Nand Gupta, and they conspired to frame the petitioner's spouse and family, according to the allegations.

To protect her husband and family from her brothers' abuse, the petitioner fled from pillar to post. To protect herself and her husband, she went to the Rajasthan Women's Commission in Jaipur. The Commission took down her statement and sent it to the Chief of Police. The SHO of Police Station Sarojini Nagar in Lucknow presented a final report. According to the report, none of the accused had committed any crime, and on May 17th, 2001, they were all freed on bond. Later, the

investigative officer recorded Lata's statement and armed guards were given for her safety and protection. As per Section 164 of the Cr. P.C., on May 29th, 2001, the Hon'ble Chief Judicial Magistrate took her statement and kept it on file. The petitioner, Lata, claimed that she married Brahma Nand Gupta voluntarily and without being forced. Despite this, on October 5th, 2001, the Chief Judicial Magistrate issued the committal order.

The Police Department received a protest petition claiming that the solicitor was psychologically unfit. When she was checked by a doctor, it was determined that she had no mental condition of any kind.

D. Judgement

The Supreme Court granted the writ petition because of the specific facts of this case. There is a Supreme Court decision saying that those who commit acts of violence and harassment shall face harsh penalties. The relevant authorities were ordered to initiate criminal procedures against the petitioner's siblings and other parties involved. According to the court, the petitioner is a major and has always been a major. As a result, she may marry whomever she wants, and the Hindu Marriage Act or other legislation places no restrictions on inter-caste unions. As a result, neither the petitioner nor her husband (or any of his ancestors) committed any wrongdoing.

Session Trial No. 1201/2001 captioned "State of Uttar Pradesh vs. Sangita Gupta & Ors." which resulted from FIR No. 336/2000 filed at Police Station Sarojini Nagar, Lucknow and ongoing before the Fast-Track Court, Lucknow was thus cancelled, as were the warrants against the accused.

5. Smt. Noor Jahan Begum v state of up and ors 2014 Case Analysis

A. Case Summary

Muslim males married Hindu girls in a Muslim wedding rite called Nikah in the instance of Noor Jahan Begum, who had converted from Hinduism to Islam. Both couples petitioned the Allahabad High Court for police protection in a series of writ petitions. The question was whether a Hindu girl's conversion to Islam only for the sake of marriage to a Muslim guy, even if she had no prior knowledge of Islam, was legal. As a result, the petitions were thrown down by the Supreme Court as being unfounded.

Additionally, the Court cited its judgement in Lily Thomas v. Union of India, in which the Court observed:

"If someone wants to convert from Christianity to Islam, it must be done with their free permission and the trust they have in Allah or Prophet Muhammad. Only then can their conversion be deemed genuine. If the only reason for the conversion is to assert one's rights, avoid marriage, or accomplish some other egotistical goal unrelated to religious convictions, it cannot be considered genuine. An individual's decision to change their faith is only legitimate if they do so honestly and with a willing heart, leaving their former religion behind." On these grounds, the Allahabad High Court rejected the married couple's appeal.

B. Judgement

Significantly, the court noted, "We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year."

"The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India. Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty", the Division Bench added. The Bench reiterated, "Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India."

With admiration to the FIR listed for the petitioner, the court said, "Before parting we wish to reiterate that we are quashing the FIR primarily on the ground that no offences are made out, as discussed above, as also the fact that two grown-up individuals are before us, living together for over a year of their own free will and choice." The court also recommended that "We, however, expect the daughter to extend all due courtesy and respect to her family."

Prohibition of Unlawful conversion of Religion Ordinance 2020, UP and other state anti-conversion laws Analysis

It was issued on November 27th, 2020, the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance (2020). According to the legislation, undertaking a religious conversion must follow a certain process, and converting against the law is prohibited.

To become a different religion, follow these steps: To comply with the law, people and religious convertors must notify the District Magistrate in advance of their intent to convert religiously (DM).

A jail sentence of six months to three years as well as a fine of at least 10,000 rupees is applicable (for those undergoing conversion), whereas a prison sentence of one to five years or a fine of at least 25,000 rupees is applicable to non-converts (for convertors). If there's a violation, the conversions will be thrown out. A police inquiry of the planned conversion's motivation, purpose, and justification must be undertaken after the DM gets both statements.

The converted individual has 60 days from the date of conversion to make a declaration to the DM. A person's previous and new religious affiliations will be included in the declaration. A copy of the declaration will be displayed by the DM until the date of certification of the conversion and any objections to the conversion will be recorded by the DM. DM. To prove his/her identity, the convert must appear before the DM no later than 21 days after submitting the statement and affirm the declaration's contents. The conversion will be deemed invalid if any of these steps are not followed.

Force, deception, undue influence, and allurement are all prohibited by the Ordinance, as is fraud or marriage as a means of causing religious conversion. Additionally, it makes it illegal for anybody to assist, persuade, or conspire in such conversions. Reconversion to one's former faith is, however, permitted.

Relationships that have undergone a religious conversion: A marriage may be deemed null and invalid under the Ordinance if

- (i) It was carried out solely for the aim of converting someone illegally or vice versa
- (ii) The process for converting to a different religion was not followed.

Penalties for inducing or assisting an illegal religious conversion are set out in the Ordinance and include the following: Repeat offenders face a penalty that is two times as harsh as the first time they broke the law. The guilty would also have to pay the victim of conversion compensation of up to 5 lakh rupees. The Ordinance has no bail requirements, and all offences are non-bailable.

H. Fundamental right of freedom of religion

Articles 25-28 of the Constitution of India protect religious freedom as a basic right. When independence in 1947, modern India became a secular state after the Indian constitution's wording was revised in 1976. The Indian Supreme Court held that India already a secular state when it established its constitution, and all this amendment did was make explicit what had previously been implied in articles 25 to 28. In India, every single person holds the freedom to peacefully practice and promote his or her faith. A number of instances of religious intolerance have led to riots and bloodshed, such as the 1984 Delhi Anti-Sikh Massacre in Delhi, the Kashmir and Punjab Anti-Hindu Riots in 1990, the Gujarat Riots in 2002, and the Odisha Anti-Christian Riots in 2008. Despite worldwide criticism, several of those responsible for the Anti-Sikh Massacre in Delhi in 1984 remain at large.¹⁵

¹⁵ "Donald, Alice, and Erica Howard. "The right to freedom of religion or belief and its intersection with other rights." (2015)."

I. Conclusion

Human behavior is shaped in large part by religious ideas and beliefs. The globe is now experiencing many crises, one of which is a religiously motivated conflict. A state must recognize the sensitive nature of religious freedom problems while simultaneously doing its part to maintain societal harmony, making government regulation of some activities a necessity. Any democratic administration has the problem of maintaining a healthy balance between individual freedom and the needs of the society. Article 25 of India's Constitution and Articles 18 and 19 of international human rights treaties, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, guarantee the right to freedom of conscience, which includes the right to change faith (ICCPR). One's ability to change religion includes the freedom to choose and select whatever faith one adheres to in the first place. No one could be subjected to undue influence that may infringe their right to maintain one's selected religious ideology or belief system, according to ICCPR article 18. Although propagation as a method of converting others is only seen in a few faiths, this does not entail that this right is unassailable in all cases. Article 25(1), the constitution's weakest protection of religious freedom, allows for restrictions on the right of conversion. Instead of ensuring that a person's emerging religious identity causes societal havoc, the state is responsible for protecting both the individual and the social fabric as a whole. As a result, the state has a duty to respect and protect individual rights. While religious freedom is essential for the complete evolution of the individual intellect and individuality, it cannot be the only criterion for declaring the Acts unlawful and invalidate them as a result.