
ANALYSING “LOVE JIHAD” FROM DIFFERENT PERSPECTIVES OF LAW AND ITS EFFECTS

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ABSTRACT

Inter-religious love and marriages are tricky terrain. They challenge various norms and customs and arouse the passions of religious fundamentalists. The latest in such constructs by the Hindu right is the alleged “Love Jihad” or “Romeo Jihad”. In this paper I have tried to cover different aspects regarding the new law formed by the politicians, how these laws reflect Hindu paranoia of decreasing dominance vis à vis Muslims. This will be explored within two contexts. First, it explores how the law violates the human rights and fundamental rights of a woman. And secondly, it focuses on criminalization of the law and its effects.

Introduction

Nationalism is firmly rooted in gendered stereotypes. The image of the nation as feminine, or even divine, and in need of external care has been used throughout the world, from Lady Liberty to Bharat Mata (Mother India)¹. Marriages and relationships between different religions can be challenging. They upset many traditions and conventions and inflame the religious fundamentalists' emotions. Such intimacy's "threat" has frequently led to "constructed" campaigns that reflect the worries and anxieties of conservative forces. The most recent of these is the alleged "Love Jihad" or "Romeo Jihad" organisation, which was allegedly founded by Muslim extremists and young Muslim males with the intention of converting Hindu and Christian women to Islam via deception and displays of fake love. In the past, some Indian States passed anti-conversion laws with a view of "preventing the disruption of society and culture" ²caused by unauthorised religious conversions. Such laws once allowed for the prohibition of religious conversions on the basis of coercion, enticement, or allurements.³ However, they have been criticised for their generality; vague definitions of terms such as "inducement" make it hard for a convert's volition to be assessed.⁴ As a result, the criminal penalties associated with anti-conversion laws have become more stricter over time. Making the prior notification to the District Magistrate for a conversion "mandatory" is one such case.⁵

Understanding Love Jihad

A police team showed up at a wedding location in Uttar Pradesh on December 3, 2020. They were informed that a Muslim man was getting married to a Hindu woman without first obtaining the District Magistrate's consent. After being convinced that the bride and groom will obtain the necessary permits before being married, the overly concerned police ordered the pair to call off their wedding and left. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020⁶, a new law in Uttar Pradesh that places onerous limits on religious

¹ Mayer, Tamar, ed. 2012. *Gender Ironies of Nationalism: Sexing the Nation*. Abingdon-on-Thames: Routledge.

² Orissa Freedom of Religion Act, 1967; Madhya Pradesh Freedom of Religion Act, 1968; Arunachal Pradesh Freedom of Religion Act, 1978; Gujarat Freedom of Religion Act, 2003; The Himachal Pradesh Freedom of Religion Act, 2006.

³ The M.P. Dharma Swatantrya Adhiniyam, 1968, Sec3; Orissa Freedom of Religion Act, 1967, Sec2; Gujarat Freedom of Religion Act, 2003, Sec3; The Himachal Pradesh Freedom of Religion Act, 2006, Sec3.

⁴ Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 *Law and Contemporary Problems* 109, 120 (2008) available at <https://scholarship.law.duke.edu/lcp/vol71/iss2/9/>.

⁵ Gujarat Freedom of Religion Act, 2003, Sec5(1); The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Sec8(1) (November 27, 2020).

⁶ <https://www.barandbench.com/news/litigation/uttar-pradesh-ordinance-religious-conversion-explained>.

conversions and interfaith weddings, is the cause of this unusual episode. According to Section 8, anybody planning to convert must notify the District Magistrate at least 60 days beforehand. To discover the "intention" and "purpose" of the conversion, the magistrate is required to request that the police conduct an inquiry. After that, the convert is required to send a statement of conversion to the magistrate, who must then post the declaration in his office to alert the public. Public opposition to the conversion may even be expressed by notifying the Magistrate. Without going through this lengthy process, converting is punished by up to three years in jail.

Despite the fact that there have been aspects of the "endangered Hindu woman" and the "violent outside others" since at least the colonial era. In the southern state of Kerala, where two women were reportedly kidnapped, forcibly converted, and forced into marriage with Muslim men, the phrase "love jihad" first gained national attention in 2009⁷. Although the state discovered no concrete proof of love jihad and said it was instead a part of an effort to disseminate religious hatred and false propaganda, this instance prompted urgent involvement on its side (Mahanta 2014)⁸. The Kerala High Court, however, later declared another interfaith marriage between a Muslim man and Hindu woman as invalid because of 'love jihad' (The Tribune 2017)⁹. The husband appealed to the Indian Supreme Court, whose related probe turned out no evidence of love jihad that could be used in court (Ahuja 2018)¹⁰. In the public's perspective of Indians, the Kerala case played a crucial role in love jihad.

Love jihad – A law affecting rights of a person.

While there is nothing wrong with a legislation that aims to stop coercive or fraudulent religious conversions, this Ordinance prevents even voluntary conversions and puts many individuals at danger of spending many years in jail. The Indian Constitution clearly recognises¹¹ freedom of conscience as well as the freedom to profess, practise, and spread one's religion as essential rights. The freedom to convert to a different faith has been deemed by the Supreme Court to

⁷Rao, M. (2011). Love Jihad and Demographic Fears. *Indian Journal of Gender Studies*, 18(3), 425–430. <https://doi.org/10.1177/097152151101800307>

⁸ Mahanta, Siddhartha. 2014. India's Fake 'Love Jihad'. *Foreign Policy*, September 4. Available online: <https://foreignpolicy.com/2014/09/04/indias-fake-love-jihad/>.

⁹ The Tribune. 2017. Hadiya Case: BJP Slams Kerala Government. *The Tribune*, October 17. Available online: <https://www.tribuneindia.com/news/archive/nation/hadiya-case-bjp-slams-kerala-government-478728> .

¹⁰ Ahuja, Rajesh. 2018. NIA Ends Kerala Probe, Says There's Love but No Jihad. *Hindustan Times*, October 18. Available online: <https://www.hindustantimes.com/india-news/nia-ends-kerala-probe-says-there-s-love-but-no-jihad/story-wlpWR7BMNcdJHkb1MUso4J.html> .

¹¹ Article 25 in The Constitution Of India 1949, <https://indiankanoon.org/doc/631708/> .

fall under this right¹². The right to convert is subject to onerous restrictions by the Ordinance. Hence, by terming conversion of Hindu women to Islam as “love jihad” and cracking down on the practice, the law endangers women who are merely exercising their right to adhere to a religion of their choice.

Additionally, it violates the idea of equality in two flagrant ways. Firstly, it distinguishes between Hindu-Muslim marriages and other interfaith unions by focusing on unions in which Hindu women convert to Islam. Although the proposal's authors say that it is not religiously specific, it is very evident that the rule primarily intends to focus on conversions that only involve Hindu women. Secondly, it implies that women lack the freedom to make such decisions on their own, which is harmful to the right to gender equality. The legislation restricts a woman's freedom to practise any religion she chooses by adopting a patriarchal and protectionist stance. More crucially, the legislation violates the right to privacy of the lady and her chosen partner by subjecting their choice to the scrutiny of the government and moral vigilantes.¹³

This law constitutes a violation of both India's own constitution and its international obligations under the ICCPR¹⁴. Every individual who has reached marriageable age has the right to marry and create the family of his choosing, according to Article 23 of the ICCPR. According to the Human Rights Committee's¹⁵ judgement, Article 17 of the ICCPR, which forbids illegal or arbitrary state interference with an individual's family, complements this right. Article 17 stipulates that interferences must be both reasonable and achieve a legal objective¹⁶. This norm is clearly expressed in Article 21 of the Indian Constitution, which affirms each person's right to life and personal freedom. In the case of *K.S. Puttaswamy vs Union of India*¹⁷, the Supreme Court a landmark judgment which recognized that Article 21 inherently embodies an individual's right to privacy as a fundamental right. Importantly, marriage and religion were also noted to be intrinsic to the right to privacy. The right to privacy also explicitly protects "intimate matters," such as marriage and religion. The constitutional concept that religious

¹² <https://www.thehindu.com/news/national/right-to-convert-is-part-of-fundamental-right-of-choice-supreme-court/article23483824.ece> .

¹³ <https://www.statecraft.co.in/article/is-a-law-on-love-jihad-really-necessary> .

¹⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁵ <https://www.refworld.org/pdfid/45139bd74.pdf> .

¹⁶ <https://www.refworld.org/docid/453883f922.html> .

¹⁷ Justice K.S.Puttaswamy(Retd) ... vs Union Of India And Ors. on 24 August, 2017, <https://indiankanoon.org/doc/91938676/> .

belief is a private matter is vitiated by a law requiring the police to investigate every conversion to determine the cause of conversion and publish the declaration of conversion so that the public may learn about and object to the conversion.¹⁸

Love Jihad-Criminalising the Marriage

The fact that conversion through allurement is a crime is yet another unfavourable aspect. The constitutional sin of vagueness is present in the term of allurement. ¹⁹Offering free education, employment, a better lifestyle, or "otherwise" is one of the expressly recognised kinds of allurement. The term "allurement" has been defined to include "any temptation." The freedom to practise one's religion openly is recognised as a basic right in the Constitution. The right to spread religion will undoubtedly be in jeopardy with such a wide definition of allurement. Due to the possibility of imprisonment, imprecise and unclear criminal laws are regarded to be dangerous to individual liberties.

It is concerning that states governed by the Bhartiya Janata Party, such as Haryana, Madhya Pradesh, and Karnataka, are eager to follow Uttar Pradesh's lead and enact legislation to prevent conversions and put a stop to "love jihad."²⁰ According to a recent NDTV investigation²¹, several Hindu females from Kanpur have entered into interfaith marriages of their own free will, without being forced to convert by the other side²². In the majority of instances, the families of the girls claimed that their daughters had been tricked and pressured. The police in this case might have at best requested that the girls appear before a magistrate and give a notarized document, but instead they filed charges against the Muslim boys' families and detained them with the intent to torment them²³. Under the cover of Love Jihad, certain right-

¹⁸ 'Love Jihad' and the Crafting of a Bigoted Law in India by Rahul Machaiah; <https://thediplomat.com/2020/12/love-jihad-and-the-crafting-of-a-bigoted-law-in-india/>.

¹⁹ 'Love Jihad' and the Crafting of a Bigoted Law in India by Rahul Machaiah; <https://thediplomat.com/2020/12/love-jihad-and-the-crafting-of-a-bigoted-law-in-india/>.

²⁰ "Will End 'Love Jihad' In Karnataka": BS Yediyurappa; <https://www.ndtv.com/india-news/love-jihad-a-social-evil-karnataka-home-minister-basavaraj-bommai-says-government-consulting-experts-to-bring-law-2320994>.

²¹ "Criminalising the Marriage : Interplay Of Utilitarianism and Love Jihad Laws" by Shivang Berry and Yash Tayal; https://jilsblognujs.wordpress.com/2021/06/20/criminalising-the-marriage-interplay-of-utilitarianism-and-love-jihad-laws/#_ftnref1.

²² N.C. Asthana, Ulterior Motive of 'Love jihad' Laws Is to Drive Muslims Out of the Social Ecosystem, November 9, 2020, available at <https://thewire.in/communalism/love-jihad-laws-muslim-exclusion-ulterior-motive-hindutva>.

²³ Yogi Adityanath's 'Love jihad' crackdown: A reality Check, November 6, 2020 available at <https://www.ndtv.com/video/news/reality-check/yogi-adityanath-s-love-jihad-crackdown-a-reality-check-565619>.

wing Hindu activists and the police now have broad protection to investigate any Hindu-Muslim marriage.

Conclusion

Love jihad Laws enacted in the name of "Freedom of Religion" are the outcome of a prolonged pattern of fear psychosis that has extended throughout society towards particular groups of people. These regulations adhere to the prevalent cultural narratives that still view interfaith marriage as wicked and unethical. No matter how powerful, societal moral judgments cannot be used to prosecute any activity under criminal law. The State has not been able to demonstrate the necessity of these laws or stop the increased turmoil and disturbance that their criminalization has brought about in society. The safety of women in India is also threatened by other factors aside from the violence that is promoted against them in the name of "love jihad." Caste-based violence, acid assaults, and workplace sexual harassment are just a few of the issues that continue to taint society and prevent it from reaching gender parity. In fact, according to the National Crime Records Bureau, Delhi had an average of 87 new rape cases every day in 2021, as per the NCRB's 'Crime in India 2021' report, there was a 19.34% increase in rape cases last year when compared to 2020²⁴. Even those advocating for a legislation on "love jihad" are utilising figures that show that over the previous 10 years, just 170 examples of this activity have been registered, even though the frightening numbers of these crimes are well known. This law treats every religious conversion with suspicion rather than emphasising giving victims of coerced or fraudulent conversions the ability to seek legal remedy. It infantilizes citizens and assumes that anyone planning to convert is presumably under duress or being deceived and requires the government's protection. The burden of evidence for proving that the conversion was lawful falls on the person who "caused" it, which is one of the most problematic aspects of the Ordinance. Although forced conversions are a morally indefensible conduct, the Chief Ministers' proposed regulation will just repeat current legal concepts if that is their true objective. The only thing that will be accomplished by implementing the legislation to "protect" Hindu women from the "evil" intents of Muslim men is increasing stigma against inter-faith weddings, which are already subject to social and moral policing in India. Moreover, by portraying Hindu

²⁴ <https://thewire.in/women/crimes-against-women-rape-cases-india-2021-ncrb-data> .

women as helpless victims, the law will only water down their already limited autonomy even further.²⁵

²⁵ <https://www.statecraft.co.in/article/is-a-law-on-love-jihad-really-necessary> .