

IN THE SUPREME COURT OF INDIA

(ORIGINAL JURISDICTION)

CIVIL WRIT PETITION NO. OF 2020

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

NEERAJ SHUKLA

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH, REPRESENTED BY ITS CHIEF
SECRETARY THE APPROPRIATE AUTHORITY

...RESPONDENT

PETITION UNDER ARTICLE 32 CONSTITUTION OF INDIA
PRAYING FOR ISSUANCE OF WRIT ORDERS OR
DIRECTION IN THE NATURE OF MANDAMUS DIRECTING
THE RESPONDENT TO TAKE EFFECTIVE STEPS AGAINST
“THE PROHIBITION OF UNLAWFUL RELIGIOUS
CONVERSION ORDINANCE”, 2020 , UNOFFICIALLY
REFERRED TO AS THE “LOVE JIHAD LAW” BY MOST OF
THE MEDIA, IS A LAW ENACTED BY THE GOVERNMENT
OF UTTAR PRADESH, INDIA ON 24, NOVEMBER 2020.

TO,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE HONBLE SUPREME
COURT OF INDIA , AT NEW DELHI.**

The Humble Petitioner of the petitioner above – named

MOST RESPECTFULLY SHOWETH :-

1. That the petitioner are filing the instant writ petition in public interest. The petitioner have no personal interest in the petition and the petition is not guided b self gain of any

other person / institution / body and that there is no motive other than of public interest in filing the writ petition.

2. That the petitioner have based the instant writ petition from authentic information and documents made available through publically available documents, or from the websites of the government.
3. The present writ petition under Article 32 of the constitution of India is being filed by the petitioner to enforce fundamental rights, particularly the Article 14, Article 15, Article 21 and Article 25 guaranteed by the constitution. Of India.
4. That the petition, if allowed, would benefit the citizens of this country generally as rule of law is essential for democracy and such brazen violation of law by Uttar Pradesh state government is to the detriment to the society as a whole. Since the petitioner have no personal interest in the matter, Hence the petitioner herein are preferring this PIL.

Array of parties:-

5. The petitioner is a citizen of India, working is a student, and registered as an Advocate in Delhi Bar Council, with annual

income 30,000 / - per annum, R/O NP 12 C Pitampura New Delhi – 110034. The email address of the petitioner is advocateneeraj.info@gmail.com and mobile no – 7985796678. A true copy of the provisional Identity card of Bar council of Delhi of the petitioner bearing S.NO-1906/N/18 and Enrollment no. – D/550/2020 is attached herewith and marked as Annexure p-1 at page

6. The Respondent is the State of Uttar Pradesh, represented by its chief secretary, the appropriate authority concerned with safeguarding the fundamental rights of its citizens.

Facts of the case-

7. The brief facts that give rise to the writ petition are as follows:
8. The petitioner firmly believes that the Indian Constitution guarantees life and liberty, justice and equality for all persons. Therefore , he was moved this writ petition under Article 32 of the Constitution of India , which seeks to invoke the most salient fundamental rights. Equality before law and equal protection of laws under Article 14, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth under Article 15, Protection of life and personal

Liberty under Article 21 and Freedom of conscience and free profession , practice and propagation of religion under Article 25.

9. The petition pertains to the Law passed by the Uttar Pradesh state government, ' The Prohibition of Unlawful Religious Conversion ordinance, 2020', recommends 1-5 years imprisonment if any accused fails to prove that the conversion of the woman was not for marriage or by use of force, allurement etc. The jail sentence for the offence would be 3-10 years if the woman is from the SC/ST Community or is seen as part of mass conversion. The notice period to the district magistrate for the religious conversion has been doubled to two months from a month in an earlier draft. A true copy of the ordinance is attached herewith and marked as Annexure p-2 at page....

10. The ordinance is wrong at all levels. At a legal level, it reverses a fundamental premise of Indian Jurisprudence. It is up to a person who chooses conversion to prove that it is not fraudulent. In other words guilty till proven innocent. The bane of legislations in India is loose wording which gives almost unlimited power to enforcement agencies to abuse it.

The ordinance suffers from the same flaw and is bound to be abused to settle scores on matters unrelated to conversion. The ordinance also vests District Magistrates with enormous powers over Marriage. It's another way of politicizing the Permanent executive and worsening the equality of Governance, which is not exemplary to begin with.

11. The ordinance makes the fraudulent conversion a non-bailable offence and imposes jail terms and fines it infantilises women in particular. It imposes a harsher penalty when the conversion involves SC/ST women. The ordinance has no place in modern society which believes that adults have the maturity to make a decision in their best interest. India's Freedom of religion Acts or anti-conversion laws are state level statutes that have been enacted to regulate religious conversions. The laws are in force in many states: Arunachal Pradesh , Odisha, Madhya Pradesh , Chhattisgarh , Gujarat , Himachal Pradesh , Jharkhand , Uttarakhand and the recent one is Uttar Pradesh. While there are some variations between the state laws, they are very similar in their content and structure. All

of the law seek to prevent any person from converting or attempting to convert, either directly or otherwise, another person through 'forcible' or 'fraudulent' means, or by 'allurement' or 'inducement'. Despite criticism of India's anti conversion laws, some human rights bodies acknowledged that these laws have resulted in few arrests and no convictions. However the 'Prohibition of Unlawful Religious conversion ordinance', 2020 enacted by the Government of Uttar Pradesh have create a hostile , and on occasion violent, environment for religious minority communities because they do not require any evidence to support accusations of wrongdoing.

12. The "prohibition of unlawful religious conversion ordinance", 2020 violated the personal liberty and privacy of an individual .Therefore Marriage is an extremely personal affair. The right to marry a person of one's choice or to choose one's partner is an aspect of constitutional liberty as well as privacy. The fundamental right to privacy under Article 21 protect an individual's ability to make choices and decisions that are intimate. A nine- judge bench of the supreme court upholding fundamental right to privacy had

clearly said in 2017 that it is upon an individual on how she wants to exercise her freedom to make those personal choices. Whether one's partner would be of the same faith or not is a private decision. The way of life an individual wants to pursue after marriage is again a right of personal choice. In 2018 , the Supreme court reiterated this position of law in the Hadiya case, where it rejected the allegation that Hadiya had been forcefully converted to another religion for the purpose of marriage. It held: 'How Hadiya chooses to lead her life is entirely a matter of her choice'. The court emphasized the principles of individual autonomy and dignity with the expectation that 'such an injustice shall not again be visited either on Hadiya or any other citizen'. Contrary to the expectation of the Supreme court, the UP Ordinance and the ambiguities in it can be used to violate an individual's ability to exercise her or his choice. Furthermore , the constitutional framework does not allow social approval as a basis for recognizing personal decisions. Given the conservative nature of Indian society, inter-community marriages are discouraged, often even leading to honour killings. In such circumstances, when it is against

family or societal approval, it becomes difficult for interfaith couples to marry even under the Special Marriage Act, 1954 – a law for interfaith marriages. Reports have shown that the mandatory 30 – day notice period to raise objections to a proposed marriage under the Act allows the harassment of the couple by family members or even goons, who are opposed to their marriage. To avoid such harassment, couples may have opted to convert to their partner’s religion to get married without the 30 – day waiting period. For some individuals, the choice of their partner is much more important his/ her religion.

13. The Special Marriage Act (SMA), 1954, was enacted to enable the marriage of couples from different religions, who preferred a civil wedding. The law has two difficult features : 1) prior public notice being given ; 2) objections being called. Couples intending to marry , should give notice to the ‘marriage officer’ of the district in which one of them had resided for at least 30 days. The notice will have to be entered in a ‘Marriage Notice Book’ and a copy of it displayed in the office. If one partner is not a permanent resident of the district, the marriage officer has to send a copy to the

district where that partner has permanent residence. The notice shall be displayed in that district office too. The law also provides for objections to the marriage, Any person can object to the marriage within 30 days of the publication of the notice, on the ground that it contravenes to the conditions for a valid marriage. The marriage officer has to inquire into the objection and give a decision within 30 days. If he refuses permission for the marriage, an appeal can be made to the district court. The court's decision will be final. The Act also lays down that, when a member of an undivided family who professes Hindu, Buddhist, Sikh or Jain religions, get married under Special Marriage Act it results in his or her 'severance' from the family. These features of the law, place a question mark on the safety and privacy of those intending to marry across religions. Many settle for marriage under the personal law of one religion, with the other opts for religious conversion, while conversion to Islam and Christianity has formal means, there is no prescribed ceremony for conversion to Hinduism. The Allahabad High Court, recently, declined to grant police protection to a couple – of whom the bride was a Muslim who converted to

Hinduism, the Court's Judgement cited past precedents that said conversion should be based on change of heart, and should not be solely for the purpose of marriage. In July 2020, the Kerala Registration department decided to discontinue the practice of uploading marriage notices on its websites, Resulted from complaints, that these were being misused for communal propaganda. The notices will be displayed on the notice boards of the offices concerned.

14. The Uttar Pradesh government had declared a law on 'The prohibition of unlawful religious conversion ordinance, 2020', which prohibited conversion from one religion to another by force or fraud. Last year, the Himachal Pradesh assembly passed the Freedom of Religion Bill, 2019. Similar the Uttrakhand Freedom of Religion Act, 2018. According to the act, no one can convert or attempt to convert another other person, from one religion to another, by force, inducement, or by marriage. The Act does not cover a person re- converting to his "parent religion". Any marriage done for the sole purpose of religious conversion may be declared null and void by a family court on a petition by either party. Such 'Anti conversion laws' laws would be violative of Articles 14

and 15 of the constitution, which guarantee equality of opportunity and equal protection of the law and no discrimination on the ground of caste, creed, colour, and religion. The Allahabad High Court has now said that its earlier verdict does not lay down “good law”, In the verdict passed earlier this month, the court observed: “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. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals”. “ we fail to understand if the law permits two persons even of same sex to live together peacefully, Then neither any individual nor a family nor even state can have objection to relationship of two major individuals who out of free will are living together”, The judges observed.

15. India is a nation that is home to a diversity of religious beliefs and practices. The Indian subcontinent is the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism. According to reported 2011 census data, 79.80% of the population of India is

Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain. Laws restricting religious conversions were originally introduced by Hindu princely states during the British Colonial period—mainly “during the latter half of the 1930s and 1940s.” These states enacted the laws “in an attempt to preserve Hindu religious identity in the face of British missionaries.” There were “[o]ver a dozen princely states, including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi,” that had such laws. Some of the laws from that period include the Raigarh State Conversion Act, 1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946. Following India’s independence, the Parliament introduced a number of anti-conversion bills, but none were enacted. First, the Indian Conversion (Regulation and Registration) Bill was introduced in 1954, which sought to enforce “licensing of missionaries and the registration of conversion with government officials.” This bill failed to gather majority support in the lower house of Parliament and was rejected by its members. This was followed by the introduction of the Backward Communities (Religious

Protection) Bill in 1960, “which aimed at checking conversion of Hindus to ‘non-Indian religions’ which, as per the definition in the Bill, included Islam, Christianity, Judaism and Zoroastrianism,” and the Freedom of Religion Bill in 1979, which sought “official curbs on inter-religious conversion.” These bills were also not passed by Parliament due to a lack of parliamentary support.

16. The ordinance violate the Freedom of conscience and free profession, practice and propagation of religion under Article 25. The Constitution of India guarantees the freedom to profess, practice, and propagate one’s religion under article 25. The Supreme Court in the case of *RatilalPanachand Gandhi v. State of Bombay* clarified this provision by holding that every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for edification of others. The Supreme Court in *Rev Stainislaus v. State of Madhya Pradesh* examined whether the right to practice and

propagate one's religion cannot include the right to convert. The Court upheld the validity of the earliest anti-conversion statutes: the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967.

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

It has to be appreciated that the freedom of religion enshrined in the Article [25] is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. The law "prohibition of

unlawful religious conversion ordinance”, 2020, enacted by Uttar Pradesh Government, which are also threatening the rule of law and generally violate the fundamental rights of citizens. Moreover , these laws are acting as triggers for communal polarization of the society, imbalance the social and cultural harmony, and if not halted effectively and immediately will have disastrous consequences on the social fabric of the country.

17. In light of the aforesaid facts, the following issues have arisen:

- a)** Whether the right to life and liberty guaranteed under Article 21 of citizens can be so easily taken away by the state ?
- b)** Whether a religious conversion is truly conducted solely for the purpose of a marriage is inherently vague ?
- c)** Whether or not the state has a responsibility to protect the life and liberty of its citizens ?
- d)** Whether the right to freedom of religion and conscience of the oppressed caste and communities are violated by state which comes under Article 25 of the Indian Constitution ?
- e)** Whether the state can discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or

any of them which comes under Article 15 of the Indian Constitution ?

f) Whether the state shall deny to any person equality before the law or equal protection of the laws which comes under Article 14 of the Indian Constitution ?

g) Whether or not immediate preventive steps should be taken by the central and state governments to declare such laws null and void. These laws are consistently violating the constitution and indulging in criminal activities ?

18. GROUNDS:

A. That the current ordinance passed by Uttar Pradesh State Government (Prohibition of Unlawful Religious Conversion Ordinance, 2020) have resulted in the violation of Article 14 , 15 , 21 and 25 of the Indian Constitution. 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. Interference in a personal relationship, would constitute serious encroachment into the right to freedom of choice of the two individuals.

B. That therefore the State has clearly derogated from its obligation to protect and safeguard the citizens of this country. This Hon'ble court in the case of K.S Puttaswamy vs. union of India case on the right to privacy, which said: “the autonomy of the individual is the ability to make decision on vital matters of concern to life”. It is the duty of the state to create a climate where the cleavage between members of the society belonging to different faiths, caste and creed are eradicated. The state must act in time so that the precious lives of the people are not destroyed or threatened . otherwise, Article 21 will remain a paper guarantee. Time is long overdue for adopting measures that have more than a hortatory effect in enforcing Article 21 of the constitution. The state cannot adopt a “do nothing attitude. ... The state has to enforce minimum standards of civilized behaviour of its citizens so that the life, liberty, dignity and worth of an individual is protected and preserved and is not jeopardised or endangered. If it is not able to do all that then it cannot escape the liability to protect the fundamental rights of citizens which mandates

that life, liberty and freedom of conscience cannot be taken away except according to the procedure established by law”.

C. That the Religious conversion- just for the marriage – is not acceptable , the Allahabad High court said referring to an earlier order as it refused to interfere in a petition by a couple, seeking protection three months after their marriage. The woman who filed the petition is a Muslim by birth but had converted to Hinduism a month before her marriage to a Hindu man. In an order passed on September 23, a single judge bench of justice Mahesh Chandra Tripathi dismissed the couple’s writ petition that sought a direction from the court that their relatives would not interfere in their married life by ‘adopting coercive measures’. In his order, the judge also made a reference to a 2014 order by the same court that he said had’ has proceeded to observe that conversion just for the purpose of marriage is unacceptable’. The 2014 judgement, in the case of Smt. Noor jahan Begum @ Anjali Mishra &Anr. V. State of U.P. &Ors . also says, ‘ thus conversion of religion to Islam, in the present set of facts , of the girls without their faith and belief in Islam and at the instance of the boys, solely for the purpose of marriage

, cannot be said to be a valid conversion to Islam religion. These marriages (Nikah) are against the mandate in Sura 2nd Ayat 221 of the holy Quran “.

D. That the true danger with this new so- called ‘love jihad’ law lies not in its explicit textual basis, which seems fairly innocuous prima facie. Instead, its threat lies in its ambiguity. Although the scope has been cleverly restricted within constitutional margins, the law employs the use of open – textured phrases such as “undue influence,” “allurement” and “coercion”. Indeed , even the question of whether a religious conversion is truly conducted solely for the purpose of a marriage is inherently vague. It is in the subjective assessment and appreciation of these tenuous phrases that the peril lies- this is a matter left entirely to the discretion of the court . Yet hon’ble court are as much embedded within the threads of social fabric. And, undoubtedly, the social fabric of our nation has yet to come to terms with interfaith marriage- as highlighted by the recent Tanishq ad incident. The prohibition of unlawful

religious conversion, ordinance, 2020. It carries the potential to be misused in an unconstitutional form. In its November 11 ruling, a High Court bench of Justice Pankaj Naqvi and Justice Vivek Agarwal had said none of earlier judgements dealt with the issue of life and liberty of two matured individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live. We hold the judgements in Noor Jahan and Priyanshi as not laying good law”, the HC observed. The verdict followed single judge justice Mahesh Chandra Tripathi’s September 23 order that dismissed a petition by priyanshi, alias shamreen, and her husband to be provided police protection.

- E.** That the state cannot shy way from it responsibility to safeguard and protect the life and liberty of each of its citizens. Thus , it is for the state functionaries to evolve methods aand strategies to safeguard every citizen’s right as guaranteed under Article 14 and 15.
- F.** That the state is obligated by virtue of Article 21 of the constitution to protect life and personal liberty of every person present in the jurisdiction of the state. The

constitution has conferred, a negative obligation on the state, where in the state is to act in a manner that no person is deprived of his life and personal liberty except according to the procedure established by law.

G. The official report of a 'special investigation' launched by Uttar Pradesh police into allegations of allurement and forced conversion of Hindu women- submitted to Kanpur inspector general of police Mohit Agarwal last staurday – has concluded that the majority of Hindu-Muslim romance cases probed were consensual. "In all, there were barely nine recently reported cases of marriages between a Hindu girl and Muslim boy. And these too were limited to just five of UP's 75 districts, namely Kanpur, Meerut, Aligarh, Lakhimpur- kheri and Ghaziabad. In five of these nine cases, the Hindu girls openly refuted the accusations of 'love jihad' on the basis of which complaints had been made by their respective parents. In most of the remaining cases , say lawyers, police and parental pressure usually works to undercut the marriages, with the girls then agreeing to return home, In addition to its openly communal nature, the law is also harmful to women and takes no account of their

freewill, several have argued. Apart from the fact that the UP police has found no evidence of what state chief minister calls 'love jihad' in the state, the legal crutch the chief minister was leaning on has now been taken away by the High court.

- H.** That it is duty and responsibility of the state to safeguard and protect each individual from any infringement on their fundamental right guaranteed under Article 25 of the constitution. Each such act of infringement that is in violation of Article 25 of a person illustrates the failure of the state to safeguard the right guaranteed under the said Article .
- I.** That the “To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown – up individual but would also be a threat to the concept of unity in diversity, a bench of justice Pankaj Naqvi and Vivek Agarwal said. “we fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even the state can have an objection to the relationship of two major individuals who out of their own

free will are living together,” the judges also said. The bench was ruling on a petition filed by Salamat Ansari, who married priyankakharwar/Alia. Priyank’s father had filed an FIR against Salamat, saying that his daughter had been kidnapped and had abandoned Hinduism to marry Salamat. The bench said that it did not see Salamat and priyanka as a Muslim and Hindu, but as two adults who had chosen to spend their lives together of their own free will, and said they were happy together. The FIR filed by priyanka’s father must be quashed, the court said, as it appears to have been filed “prompted by malice and mischief only with a view to bring an end to marital ties. The bench said that “ we do not see priyankakharwar 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 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. Interference in a personal relationship,

would constitute a serious encroachment into the right to freedom of choice of the two individuals”.

19. The petitioner has filed this petition for directions to protect and safeguard fundamental rights of religious and oppressed minorities under Article 14, 15, 21 and 25 of the constitution, since the petitioner has no alternate efficacious remedy but to approach this Hon’ble Court under Article 32 of the constitution of India for the reliefs prayed for herein.
20. The petitioner has for the first time filed this petition in respect of the subject- matter, i.e ., for issuance of directive in respect of safeguarding fundamental rights under Article 14, 15, 21 and 25 of religious and oppressed minorities, against the aforesaid Respondents in India.
21. That this Hon’ble court has the jurisdiction to entertain and try this petition.
22. That the petitioner seeks leave to rely on documents , a list of which, along with the true copies has been annexed to this petition.
23. That this petition has been made bona fide and in the interest of justice.

24. That the petitioner has not filed any other petition before this Hon'ble Court or before any other court seeking the same relief.

PRAYER

In the facts and circumstances, it is most respectfully prayed that your Lordships may graciously be pleased to:

- a.) Issue a Writ Order, or Direction in the nature of Mandamus to the State Government of Uttar Pradesh to declare the New Law ("Prohibition of Unlawful Religious conversion ordinance, 2020") Null and Void.
- b.) Issue a Writ Order , or Direction in the nature of Mandamus to the Central Government to pass any legislation on "Conversion on Religion" orenact New law on "Freedom of Religion and Conscience.
- c.) Issue a Writ Order , or Direction in the nature of Mandamus to the central Government Amend the Special Marriage Act (SMA), 1954and make the necessary provisions, related to conversion on Marriage.

d.) Pass such orders as may be deemed fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

(Neeraj Shukla)

Petitioner-In-Person

New Delhi

Dated:-

IN THE SUPREME COURT OF INDIA

(ORIGINAL JURISDICTION)

CIVIL WRIT PETITION NO.OF 2020

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

NEERAJ SHUKLA

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH, REPRESENTED BY ITS,
CHIEF SECRETARY THE APPROPRIATE AUTHORITY

.....RESPONDENT

AFFIDAVIT

I, Neeraj Shukla aged about 24 years R/o NP 12C
Pitampura New Delhi - 110034, do solemnly affirm
and state as under:-

1. That I am the petitioner in person in the captioned Transfer Petition and as such I am well conversant with the facts and circumstances of the present case and competent to swear this affidavit.
2. That I have gone through the contents of this Synopsis with List of Dates from B to Writ Petition (contained para 1-25) pages from 1 to

31, Application for permission to appear and argue in person are true and correct to the best of my knowledge and belief.

3. That the Annexures P/1 to P/ are true copies of their respective originals and I state that the same are true.

DEPONENT

VERIFICATION

Verified at New Delhi on this 1st day Dec. 2020 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT