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RIGHT TO FREEDOM OF RELIGION AND CONVERSION:- IN CONTEXT OF LOVE JIHAD

"A people and their religion must be judged by social standards based on social ethics. No other standard will have any meaning if religion is held to be necessary good for the well-being of the people."

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ABSTRACT

India is a secular and democratic country, which means there is no state religion and the state is neutral and unbiased toward various religions. Despite religious persecutions and communally fanatical movements, Indian society has consistently stayed secular and has been a melting pot of culture where all the world's major religions have co-existed in harmony for millennia. The Fundamental Rights (Part III) guaranteed by the Indian Constitution are regarded as critical for safeguarding the liberties and rights of the people against infringement by the power conferred on the government and other bodies; it covers all of the civil and political rights enumerated in the Universal Declaration of Human Rights as well as the basic values cherished by our country's citizens.

Key Words:- Conversion, Society, Religion, Secular.

Introduction

Thus, Fundamental Rights are essential for an individual to attain his full intellect, moral and spiritual status. It also implies that citizens are free to profess, practice, and propagate any religion of their choice, elucidated under Articles 25 to 28 of the Indian Constitution. Guaranteeing to all persons the right to "freely profess, practice, and propagate religion", Article 25 is the bedrock of religious freedom under the Constitution. However, in practice, these rights are often bifurcated, and most people do not object as they have been made to believe that such conduct is to protect them and for their best.

Recently, religious conversions have been in the limelight, leading to passionate debates about freedom of religion. Several states in India have recently enacted laws regulating religious conversion, particularly conversions for the purpose of marriage. This has fuelled debates among supporters and critics about the state's role in matters of religion and marriage. "The Prohibition of Unlawful Religious Conversion Ordinance, 2020," passed by the Uttar Pradesh government, maintains a special focus on conversions to Islam in particular. While the original focus behind anti-conversion laws was concerned with all religions, the revived interests appear to be entirely centred on conversion to Islam.

The new Ordinance, which obtained the Governor's assent in late November, has already resulted in the arrest of two people. Following Uttar Pradesh, states like Madhya Pradesh, Haryana, Karnataka, and Assam are preparing similar 'anti-Love Jihad' legislation to criminalize religious conversions through marriage. An interesting aspect of the Ordinance is that it still does not define what 'Love Jihad' is but attempts to criminalise it. Despite the fact that the goal of such legislation was to combat purported attempts to convert Hindu women to Islam through marriage, the Ordinance makes no reference of any specific faith. So, does this Ordinance apply to non-Hindu-Muslim relationships? It is still unclear and we will only know as more cases come up before the Courts.

The provisions of the UP Ordinance, on the face of it, appear to violate fundamental rights of the individual by putting restriction

on their freedom to convert. The aim of the Ordinance is to limit forceful conversion but the provisions give too much power in the hands of the state which might lead to arbitrariness in enforcement.

However, in the landmark judgment of **Rev Stanislaus v. State of Madhya Pradesh**,¹ the Supreme Court assessed the question of whether the right to practice and propagate one's religion includes the right to convert. Chief Justice A N Ray adopted a mixed approach in interpreting Article 25 of the Constitution. Article 25 expressly lays down that subject to public order, morality and health. To the other fundamental rights guaranteed in the Constitution, all citizens are equally entitled to exercise freedom of religion freely. He remarked: "It has to be remembered that Article 25(1) guarantees 'freedom of conscience' to every individual, and not merely to the followers of one specific religion, and that, in turn, suggests that there is no fundamental right to convert another person to one's religion because that would influence on the freedom of conscience guaranteed to all the citizens of the country. There may not be a fundamental right to religious conversion as held in Stanislaus case. Nevertheless, it is undoubtedly a right to convert one's religion if there is no element of fraud, coercion, and allurement.

In the historical judgement of Justice **K.S. Puttaswamy (Retd) v. Union of India**² the Supreme Court held that the right to privacy is an intrinsic part of Article 21. Although the right to freely profess, practice, and propagate religion may be an aspect of free speech guaranteed under Article 19(1) (a), the freedom of faith or the belief in any religion is a matter of conscience that falls within the ambit of purely private thought process and is also an aspect of liberty. Other than religious beliefs, there are other aspects of an individual's freedom of conscience, such as political beliefs protected by Article 21.

In the recent case of **Salamat Ansari and Ors vs. State of Uttar Pradesh and Ors**,³ a Division Bench of Allahabad High Court held that, "The freedom to live with a person of their choice,

¹ Rev Stanislaus v. State of Madhya Pradesh 1977 SCR (2) 611.

² K.S. Puttaswamy (Retd) v. Union of India 2019 10 SCC 1

³ Salamat Ansari and Ors vs. State of Uttar Pradesh and Ors (Cri. Misc. W.P No. 11367 of 2020).

regardless of religion, is inherent in right to life and personal liberty provided by Article 21." Interference in a personal relationship would constitute a severe encroachment into the two individuals' right to freedom of choice.

Indian Constitution and International Human Rights Law provide ample guarantees to the right to freedom of religion, belief, or conscience by enacting several provisions for its protection and specifying the grounds on which such right can be limited or curtailed. The freedom of religion or belief comes into conflict with other rights. The settled convention decides each dispute on a case-by-case basis and concludes which right would take precedence in that particular situation. All the principal international instruments explicitly mention the right to conversion as implicit in the right to freedom of religion. Even solicitation has been held lawful in the USA, and any Ordinances or orders passed to ban such solicitation have been reversed by Courts. The Constitution guarantees the right to freedom of religion, but, unlike ECHR and UDHR, it does not expressly include the right to convert. Our Constitution has similar rights and guarantees as international law in other aspects of the freedom of religion.

Objective of Research Paper:-

01. To Examine the provisions of Constitutional law and extend of religious freedom in India.
02. To study the efficiency of constitutional provisions in safeguarding religious practices and Conversion

Concept of religion:-

There is no agreement on the definition of religion. Etymologically, the expression religion combines the two Latin expressions, "re" meaning back and "ligare" meaning to bind.⁴ According to Merriam-Webster's Comprehensive Dictionary, religion means a belief binding man's spiritual nature to a supernatural being involving a feeling of dependence and responsibility, together with the emotions and practices that

⁴ A. Parthasarthy: Vedanta Treatise, at p. 106.

naturally flow from such a belief.⁵ The German philosopher **Immanuel Kant** defines religion as "religion is the recognition of all our duties as divine commands". **Milton Yinger**, American sociologist defines religion as "a system of beliefs and practices by means of which a group of people struggles with the ultimate problems of human life."⁶

As every religion is founded upon specific ideas and beliefs and adheres to certain practices, the question of the extent to which freedom of religion should be permitted is of great importance in a democratic society founded upon the principle of Rule of Law. In a theocratic state, law and religion are not separated from one another and therefore, freedom for those professing a faith other than the state religion is always minimal. Such people are treated as second class citizens and denied equality in many respects with persons belonging to the state religion. In countries which have the notions of Western Democracy, the society is more open and freedom of religious belief has become as an established value as well as a basic human right. In different democracies this freedom manifests itself in different ways.⁷

India being a secular country giving a home to all the religions, implying it does not have any state religion. Religion is quite simply a matter of personal preference, faith, or sets of beliefs. Everyone should be left free to practice the religion of their choice. To guarantee this, the Indian Constitution grants all citizens the right to profess, practice, and propagate any religion

Historical Aspect of Conversion

If we look at the history of religious conversion in India, it can be observed that religious conversion has taken place

⁵ Recovery Dictionary, uana.com/croc/recovery/dictionary/r.htm.

⁶ Rai Diva, "Right to Freedom of Religion: Articles 25-28 of the Indian Constitution," iPleaders, January 21 2020. blog.ipleaders.in/right-to-freedom-of-religion-articles-25-28/.

⁷ M N Rao. "Freedom of Religion and Right to Conversion". Eastern Book Company. 2003. ebc

India.com/lawyer/articles/706.htm#:~:text="Article%2025(1)%20guarantees,of%20another%20person%20to%20his.

under different circumstances over time. It is also apparent that the process of conversion to another religious faith often attracts those people who feel disillusioned or lost in their existing religion or in life. Thus, it is generally observed that those people who are socially oppressed, politically isolated, and economically weaker in the society, resort to conversion for their self-gratification and amelioration.⁸

M.N. Srinivas has envisaged the term "**Sanskritization**" for denoting the process where lower-caste Hindus, tribes and Dalits imitate the customs, rituals, and norms of the Hindu upper-castes as an attempt to enter into the world of Hinduism for their social mobility. However, as a result of a split in the Hindu tradition, new independent religions like Buddhism and Jainism arose. During the sixth century B.C., many Hindus accepted Buddhism and Jainism, which had their deep roots in Hindu tradition, as their faith. These two religions emphasized Hinduism's inherent values, like the theory of predestination, transmigration of soul, and rebirth. Nevertheless, these two religious traditions undermine the principle of hierarchy based on Caste and Varna, which is one of the factors that attract many communities to embrace these two religions, as a means of escape from the chains of caste oppression and supposed inferiority. In the later Vedic era, many kings adopted Buddhism as their state religion, by rejecting Hinduism due to its complexity and orthodoxy in prescribing various rituals.

Thus, adoption of Buddhism and Jainism was a method to accept and follow the ideas and values connected with these two religious faiths, especially to escape from the shackles of orthodoxy, dogma and customs of Hinduism. To counter the wake of Buddhism and Jainism in the post-Gupta period, many Hindu religious reform movements broke out, especially in the Southern part of India, to keep the basic ideas of Vedas intact among the Indian people. Some of the influential figures who promulgated these orthogenetic changes in tradition through re-

⁸.Gogoi, Kukil. "Religious conversion in India and its different modes". Mssv Journal of Humanities and Social Sciences. VOL. 3 NO. 1 [ISSN 2455-7706].mssv.co.in/Journal/Vol3no1/5._KUKIL.pdf.

formulation and re-interpretation of the basic tenets of Hinduism's cultural and ritual structure and made it approachable to the lives of the people were Shankaracharya, Ramanuja and Madhava.

1. Conversion to Islam:-

The contact of India with Islam began from the 18th century due to the Arab conquest of the Sind. Engraved inscriptional pieces of evidence in Kerala indicated the presence of Muslims by the 9th century. But significantly from the 13th century onwards, the conquest of Islamic rulers had made an overpowering effect on the socio-economic and political perspectives of Indian individuals. Many social scientists consider conversion to Islam in India by force as an extraordinary case rather than a rule or a widespread assumption. Moreover, the widespread prevalence of Hinduism, even after the advent of Islam, is testament to the fact that there was no mass conversion to Islam under the Islamic rulers.

2. Cast Division Based on Occupation:-

Caste is a division that supposedly was based on a person's karma, created a division based on deeds of a person. The person doing preaching became Brahmin, the person defending people and fighting wars became Kshatriya, the person involved in business became Vaishya and person providing service to others was called Shudra. Even though it was dependent on a person's occupation, a hierarchy was still observed. Preaching was regarded a pious or spiritual occupation. Hence, Brahmins were at the top of the system than came Kshatriya, Vaishya and the Shudras, who were at the bottom of the system. A code of conduct was also followed and observed, unlike that of today. The code of conduct also prescribed the punishment of being cast out of society, if any person committed a crime. The quantum of punishment differed based on a person's position in the social hierarchy, i.e., if a Brahmin and a Shudra committed similar crimes, the punishment prescribed will be more severe for a Brahmin and less severe for a Shudra. A Brahmin was considered a person knowing the Vedas, and a Shudra does not possess such

spiritual knowledge. Therefore, according to this code of conduct, if a Brahmin commits a heinous crime he will be debarred from being a Brahmin and will be declared an outcast. But this caste division based on occupation did not last long as the persons on the top of the structure or hierarchy began to consider their position as a possession. Thus, the rules of caste division were altered or mended to become a rigid structure. And the system which was earlier based on occupation started becoming a system based upon patriarchy.

The lowest of the four Varnas of the caste system were regarded so ritually polluted that all contact with them was to be avoided. 'Untouchable' and 'Antyaja' are two names that Dr. Ambedkar used for these categories. Shri Sant Ram called them 'the Depressed Classes.' And Mahatma Gandhi called them 'Harijans' ('Children of God'), and nowadays, they are called as Dalits ('Oppressed').

3. Patriarchal System:-

The rule of patriarchy brought a rigid code of conduct in the present caste system. Under this caste system, heirs of a person were made to take up the same occupation which their ancestors were doing, i.e., a Brahmin's son will become a Brahmin, and son of a Shudra will remain a Shudra. So, this system forced an occupation upon a particular group of persons. This change to the patriarchy system also brought changes in other aspects of society such as Shudras' movement being restricted to their villages only, their occupation being limited only to menial tasks, etc. Such behaviour of upper caste people towards the lower castes gave rise to a feeling of anger and repression amongst them.

4. Downtrodden:-

Caste has always been present in India. As the historian, John Webster has said: "Caste is generally independent of religiosity, for both Hindu and Christian members of untouchable castes are often treated as equally inferior. It is within this context that the term "Dalit," meaning "oppressed" or "broken," takes its form. What unifies the wide range of work on Dalit experience and religiosity is an acknowledgment of caste as a construct that is

not bound to a single religious community or institution."⁹

Still, as it never got channelized, India has not witnessed any significant Dalit upliftment movement though certain attempts have been made. While these attempts were being made, people noticed the introduction of different religions and beliefs. Such religions were of both foreign and Indian origin such as Buddhism, Jainism, and Christianity. As these religions were unknown to Indians, the word regarding these religions began to spread, i.e. propagation. The followers of these religions started to propagate their religion to increase the number of followers. The gospel worked for a few, among those who were already frustrated with the present system or practices. The main reason for the propagation of these religions was that these religions did not have any place for caste discrimination.

5. **Tribal Conversion:-**

Tribes in India were often in an ambiguous situation when asked about their religion. It is believed that most of the tribes in India practice Animistic religion. However, due to the non-existence of their written historical records, they often become the victims of misrepresentation of their earlier religious faith and undergo the process of conversion. Due to intermingling with the various religious communities, their earlier religious practices have gone extinct and immersed gradually into another religious faith through conversion. However, re-conversion also occurs among the people on spiritual, political, economic, and social grounds.

Love Jihad:-

Love Jihad, also known as Romeo Jihad, is an Islamophobic conspiracy theory propounded by right wing/Hindutva organisations,¹⁰ stating that Muslim men entrap

9 Rastogi Vasundhara." Conversion and Reservation: Christian Dalits and the obstacles to social mobility". Legal ServicesIndia.legalservicesindia.com/article/1385/Conversion-and-Reservation:-Christian-Dalits-and-the-obstacles-to-social-mobility.html.

10 Hindutva (transl. Hinduness) is the predominant form of Hindu nationalism in India. As a political ideology, Hindutva was articulated by Vinayak Damodar Savarkar in 1923.

Hindu women by means such as seduction, faking love, deception, kidnapping, and marriage, in order to convert these women to Islam as part of an extensive "campaign" by Muslims against Hindu women.

There is no particular definition of the word Love Jihad. A conspiracy theory purports that Muslim men try to befriend Hindu women for marriage and try to convert them to Islam. There is no proof of such incidents taking place but merely allegations against Muslim men. The recent Ordinance titled "The Prohibition of Unlawful Religious Conversion ordinance, 2020," passed by the Uttar Pradesh government, puts a special focus on conversions, in particular conversions to Islam, and declares any conversion for marriage void. Although the Ordinance was enacted to combat alleged attempts to convert Hindu women to Islam by marriage, the Ordinance does not specify any religion. Is this rule applicable to relationships other than Hindu-Muslim relationships as well? There is no certainty regarding that.

Two people have already been charged as a result of the current Ordinance, which was signed by the Governor in late November. After Uttar Pradesh, other States like Madhya Pradesh, Haryana, and Karnataka, Assam plan to develop similar 'anti-Love Jihad' laws to criminalize religious conversions for marriage. An interesting aspect of the Ordinance is that it still does not define the term 'Love Jihad' but attempts to criminalize it.

The idea behind 'love jihad' was first mooted in 1927. In the beginning of 20th century, several Hindu reformers talked about how Hindu women were being forcibly married to Muslims and converted to Islam. The belief was spreading that Muslims were taking away Hindu women. In recent years, a rumour spread in Uttar Pradesh's Muzaffarnagar that a Hindu woman married a Muslim man and converted to Islam after the marriage. Later, similar rumours emerged in Kerala that many Christian girls were also being converted to Islam in the guise of marriage. Between 2006 and 2012, allegedly 447 Christian girls had been converted to Islam on the pretext of marriage. In Kerala, the then Congress CM, Oommen Chandy, admitted in the assembly

that between 2006- 2012, 2,667 women from other faiths had converted to Islam because they married Muslim men.

Major events of Conversion in India:-

Significant conversion events are not reported unless the media highlight them or religious organizations make a hue and cry. Following are the significant incidents of religious conversion in post-independence India.

01. Nagpur (MH):- The first and most prominent mass conversion, which the country has ever witnessed, took place on 14th October 1956 in Nagpur, Maharashtra. About half a million Dalits renounced Hinduism as their religion. They embraced Buddhism under the leadership of the social reformer and visionary, Dr. B.R. Ambedkar, who is known as the prophet of Dalit emancipation.

02. Dulina (Haryana):- Another significant event of religious conversion which created a lot of hue and cry in the society took place at Gurgaon, Haryana 2002. This conversion took place after the shocking incident of a mob of upper caste people burning Five Dalits alive, in a police station at Dulina in Jhajjar District in Haryana. The Police remained a silent spectator. The families of these massacred Dalits were left with no choice but to renounce the religion which led to such a violent and hateful crime. All five families of the massacred Dalits converted into Buddhism at Rabidas Mandir, Gurgaon, and Haryana on 28th October 2002 under the banner of All India Confederation of Scheduled Caste/Scheduled Tribe organization and the Lord Buddha club. The conversion took place in the presence of a famous film director, the All India Christian Council, the Jamiat Ulma-I Hind and in the presence of Media Persons. Another dimension of this event of conversion is that after this event, some right-wing Organizations rushed to these families and threatened them with dire consequences on account of the above-said conversion. Due to assaults and threats and under the pressure of these right-wing organizations, ultimately, the five Dalit families broke down and had to make a public statement that they did not leave the Hindu religion; and that

they did not convert.

03. Guntur (Andhra Pradesh):- In July 2002, another incident of religious conversion took place in Guntur district, Andhra Pradesh, where 70 Dalits converted into Christianity.

04. Delhi: In the year 2002, Udit Raj, the Chairman of All India Confederation of Scheduled Caste/Scheduled Tribe Organizations and the Lord Buddha Club, gave a nation-wide call for conversion. This conversion ceremony was supposed to be performed at Ramlila Maidan of Delhi. Around one million Dalits were supposed to convert to Buddhism

Conclusion:-

The issue of conversion has created significant debates in India, and it should be noted that changing one's religion should be a personal choice and not influenced by others. Looking at the history of conversion, the reasons for conversion are many. Conversions take place either due to allurements or due to the threat of divine displeasure. Another motive for conversions is poverty and social inequalities, including untouchability, to which Dalits are subjected in the society. Another reason for conversions is poverty and socioeconomic disparities, particularly untouchability, which Dalits face in society.

Conversion is frequently an ennobling event, allowing individuals to flee oppression from their previous religion while also serving as a reforming force for religion as a whole. There is no better example of this than Ambedkar, who spent years persuading Dalits to abandon Hinduism. In a stirring speech at the Bombay Presidency Mahar Conference in 1936, Ambedkar declared, "Religion is for man, not religion for man." Convert yourself to receive compassionate treatment. Convert to become more structured. Convert to become powerful. Convert to ensure equality. Convert for the sake of liberty. Convert so that your family life would be pleasant."

Many people convert in order to reach god consciousness or other spiritual aims. There is no reason to penalize every convert, especially false allegations and accusations. Some states, such as Madhya Pradesh and Uttar Pradesh, have introduced religious

freedom legislation that seeks to prohibit conversion for the sake of marriage. These rules should only apply to illicit conversions by illegal techniques such as deception and allurement. It should be noted that not all conversions are prohibited.

Individuals are legally bound to their religion of birth as a result of these regulations, and they do not have the ability to convert on their own desire, despite the fact that the Constitution grants such a right to all. As a result, the question remains whether such laws are in accordance with the provisions of the Constitution, or whether they go beyond the scope of the Constitution and intrude into people's personal and private choices.