

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

I.A. NO. OF 2021

IN

WRIT PETITION (CRIMINAL) NO. 405 OF 2020

IN THE MATTER OF:-

VISHAL THAKRE & ORS. PETITIONERS

-VERSUS-

UNION OF INDIA & ORS. RESPONDENTS

AND

IN THE MATTER OF:-

JAMIAT ULAMA-I-HIND
through its Secretary, Legal Cell

.... APPLICANT

APPLICATION FOR IMPLEADMENT

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India.

The humble Application of the
above named Applicant

MOST RESPECTFULLY SHOWETH:-

1. That the abovementioned Writ Petition has been filed by the Petitioners herein under Article 32 of the Constitution of India

challenging the constitutional validity of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (hereinafter referred to as the “Impugned Ordinance”) and the Uttarakhand Freedom of Religion Act, 2018.

2. The Applicant organization was established in November 1919 and the main aims and objectives of the Applicant organization are inter alia as follows:

- a) Protection of Islam, Islamic Culture, tradition, Islamic heritage and places of worship.
- b) Protection and promotion of religious, cultural, educational and citizenship rights of the Muslim Community.
- c) Reformation of religious, social and educational life of the Muslim community.
- d) Establishment of such institutions, which could empower Muslims educationally, culturally, socially, economically.
- e) In accordance with the teachings of Islam promotion of cordial and friendly relations among members of different Indian Communities.
- f) Any male or female Muslim is eligible to become a member of the Applicant organization if he/she is of sound mind and fully agrees with the aims and objects of the Applicant Organization.

3. The Applicant Organization is regularly involved in several philanthropic activities, some of the recent instances of the work done by the Applicant Organization includes extending relief to Nepal Earthquake victims, extending relief for victims of fire in Pune, building of colonies for the homeless in Assam, extending relief to victims of flood in Kashmir and undertaking other relief work such as providing ambulances in the flood affected areas, rehabilitating the flood victims by building homes for them. Further the Applicant organization has also built homes in Malegaon for the victims who lost their houses due to fire, built homes in Bihar for the victims who lost their houses due to flood, has extended relief to the Rohingya refugees and has set up medical camps in tribal areas including the district of Palghar in Maharashtra. Apart from such services, the Applicant organization has worked in several other areas affected by riot and natural calamities and has been spending huge amount of money for provision of Education, Medical and Legal Aid.

4. Further more recently, the Applicant organization has also undertaken relief work such as construction of homes and other flood relief work in Kolahpur, Sholapur, Sangli, Mirja flood relief. Pertinently, the Applicant Organization has also been undertaking relief work during the present Corona Pandemic.

5. The Applicant organization is not a registered organization.

6. That the Impugned Ordinance was promulgated in the backdrop of statements issued by the Hon'ble Chief Minister of Uttar Pradesh claiming that his government was working to bring a strict law to curb incidents of "love jihad". A true copy of the news report dated October 31, 2020 entitled as *Yogi's love jihad warning: 'Your Ram Naam Satya journey will begin if you don't mend ways'* published by Indian Express is annexed hereto and marked as **ANNEXURE A-1 [Page Nos. 17 to 19].**

7. That as is evident by the statements made by the Hon'ble Chief Minister of Uttar Pradesh, the impugned ordinance was promulgated to curb incidents of "love jihad" which is a terminology used to describe inter-religious marriages, which they allege involves the conversion of the woman - either by force or guile - to marry a Muslim man. In such circumstances, the Applicant Organization, wishes to raise the issue of fundamental rights of the Muslim youth, who are being targeted and demonized by using the Impugned Ordinance, which in itself is unconstitutional being violative of Articles 14, 21 and 25.

8. The Applicant Organization wishes to make the following submissions for the consideration of this Hon'ble Court:-

a) That the Impugned Ordinance attempts to regulate a personal decision of each human being by encroaching upon an Individual's choice to convert to a religion of his/her choice.

It is submitted that scrutiny by the state of such a personal decision is a grave assault on personal liberty of an individual and is violative of Article 21.

b) That the Impugned Ordinance makes it a criminal offence to convert a person by offering him/her an “allurement”. The term “Allurement” has been defined in Section 2(a) as follows:-

“Allurement” means and includes offer of any temptation in the form of:-

- i. Any gift, gratification, easy money or material benefit either in cash or kind;*
- ii. Employment, free education in reputed school run by any religious body; or*
- iii. Better lifestyle, divine displeasure or otherwise*

As can be seen from above, the term Allurement has been defined very broadly, to include even providing a gift to the person who is sought to be converted. This means if a person belonging to one religion, say Islam, gifts a non-Muslim, a book concerning the teachings of Islam and the said non-Muslim person who received the book after reading it decides to convert to Islam, the said conversion could be said to have taken place by “allurement” since it occurred after a gift was

given to the convert. Further the use of the words “or otherwise” makes the definition of allurement even more ambiguous and encroaches upon the right to propagate guaranteed by Article 25 of the Constitution. For instance, if a preacher simply gives a discourse about the positive tenets of his religion, which prompts anyone hearing it to convert, it would amount to illegal “allurement” under the ordinance. It is submitted that when a person decides to convert to another religion, such a move is usually preceded by in depth study of such other religion and many times such material is sought from other persons professing the said religion, however the Impugned Ordinance makes these other persons criminally liable by terming this sharing of religious material, as ‘allurement’.

- c) Though the Impugned Ordinance, seeks to address the mischief of forcible conversion, however it provides that “reconversion” to a person’s previous religion is not illegal, even if it is vitiated by fraud, force, allurement, misrepresentation and so on. In other words, if a person converts from Religion A to Religion B of her own volition, and is then forced to reconvert back to Religion A against her will, this will not constitute “conversion” under the ordinance at all, and falls completely outside the ambit of the law.

d) That the Impugned Ordinance, reverses the rule of burden of proof in criminal law. It is submitted that burden of proof in criminal cases is on the prosecution, and the presumption is that a person accused of committing an offence is innocent until proven guilty. However, the Impugned Ordinance proceeds on the presumption that each religious conversion is illegal. Further, the Impugned Ordinance puts the burden on the person carrying out the conversion to prove that it is not illegal. The offence of illegal conversion is also “cognizable” and “non-bailable”, which means that a police officer can arrest an accused without a warrant, and the accused may or may not be released on bail, at the discretion of the court.

e) That several times in cases of interfaith marriages, a person converts to embrace the faith of their spouse. In our nation, interfaith couples often bear the brunt of being ostracized from the community, so much so that the families engage in the crime of “honour killing”, thereby murdering their very own kith and kin, who have dared to marry outside their faith. Thus, in majority of cases, even if a person converts out of his/her own free will, the family members of the convert object to such conversion. Section 4 of the Impugned Ordinance entitles the family members to lodge an FIR, virtually giving them a fresh tool for harassing the convert.

- f) For that the Impugned Ordinance gives state sanction and administrative support to the societal hostilities which persons intending to have inter- faith marriages face. Numerous petitions filed in High Courts seeking police protection for inter-faith couples denote the level of community threat and social ostracism which they have to face. The provisions of the Ordinance energize the community groups and reinforce the social asymmetries to further disempower an individual.
- g) For that the effect of the Impugned Ordinance will be to bring a shadow of criminality over inter- faith marriages. The Impugned Ordinance empowers disgruntled family members to slap criminal cases on couples who got married defying their diktats. Since, as per Section 12, the Ordinance reverses the burden of proof by forcing the accused to prove innocence in trial, complaints could be prosecuted at the mere *ipse dixit* of the infuriated family members even without any evidence. This is evident from the fact that as per a news report published by India Today on December 29, 2020 within one month of the Impugned Ordinance, 14 cases were registered out of which only 2 were based on complaints by the victims and rest of the cases arose out of the complaints by family members. According to the report, 13 of these 14 cases are related to Hindu girls. In these cases, there have been attempts to forcefully convert them to Islam. As mentioned above, out

of these 14 cases, only two complaints have come from the alleged victim girls, in other cases, the complaint has been lodged with the police by relatives. A true copy of the news report dated December 29, 2020 entitled "*One month of 'love jihad' law in UP: 51 arrests made, 14 cases lodged, only 2 complaints from victims*" published by India Today is annexed hereto and marked as **ANNEXURE A-2 [Page Nos. 20 to 21]**.

- h) That, at the most, the practice of converting religion just for the sake of marriage might at worst be termed as 'ethically objectionable' or 'immoral', however, the same cannot be criminalized. The penal provisions of the Impugned Ordinance against conversions for the purpose marriage militate against the core concepts of criminal jurisprudence. In *Navtej Singh Johar and Ors. v. Union of India* (UOI) and Ors. [2018 10 SCC 1 at paras 578-594] while decriminalizing homosexuality, one of the reasons given by this Hon'ble Court was the "the harm principle" as propounded by J. S. Mill. The Harm Principle permits punitive action on a citizen only to prevent real and tangible harm to another. It further restricts criminal law from penalizing conduct merely on the basis of its perceived immorality or unacceptability when the same is not harmful. In the *Joseph Shine v. Union of India* [(2019) 3 SCC 39 at para 281.2 and 281.3], while

decriminalizing adultery, this Hon'ble Court observed as follows:

"The element of public censure, visiting the delinquent with penal consequences, and overriding individual rights, would be justified only when the society is directly impacted by such conduct. In fact, a much stronger justification is required were an offence is punishable with imprisonment.

The State must follow the minimalist approach in the criminalization of offences, keeping in view the respect for the autonomy of the individual to make his/her personal choices".

It is submitted that the Impugned Ordinance interferes in the autonomy of the individual to make personal choices and imposes penal consequences even when the act of conversion does not affect the society at large.

- i) Further, Section 8, provides that the person who desires to convert has to give a declaration at least 60 days in advance, while the person who performs the conversion ceremony has to give one month's advance notice. It is submitted that such a provision not only invades into the right of privacy but also risks the security of those persons whose families are opposing the conversion.

- j) For that the Impugned Ordinance mandates any person desirous of converting his religion to give a declaration his current religion as well as the religion to which he/she is converting. It is submitted that the compulsory disclosure of one's religion in any form tantamounted to violation of right to manifest his/her beliefs as one wishes and right to keep one's belief secret from public, such disclosure is unconstitutional and would tantamount to violation of basic fundamental rights guaranteed to every individual. It is further submitted that that the freedom to manifest one's religion or beliefs has a negative aspect, namely an individual's right not to be obliged to disclose his or her religion or to act in a manner that might enable conclusions to be drawn as to whether or not he or she held such beliefs.
- k) That India is a secular state and as held by this Hon'ble Court in a plethora of judgments, being a secular state means that State has no religion and it practices the policy of neutrality in the matter of religion. It is relevant to note that such requirement of mandatory declaration for conversion violates the State's promise to its citizens of maintaining religious neutrality. [See *Ramesh Yeshwant Prabhoo (Dr.) v. Prabhakar Kashinath Kunte* (1996) 1 SCC 130 at para 16; *S.R. Bommai v. Union of India* (1994) 3 SCC 1 at pg. 162].

1) That in the case of *Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors.* [2017 10 SCC 1 at para 323] while upholding the right to privacy as a fundamental right, this Hon'ble Court observed as follows :

"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture."

It is submitted that the Impugned Ordinance leads to an unreasonable intrusion into the domain of a personal autonomy. Section 8 of the Impugned Ordinance mandates an advance notice of a 60 days to the District Magistrate before the intended conversion, which is to be followed by a police enquiry into the circumstances of conversion. The religious priest doing the conversion is also required to give such prior notification. After the conversion, the person has to appear before the District Magistrate for confirmation. The authority will notify the conversion and will invite public objections,

before confirming the conversion. It is submitted that obligation to seek permission for conversion two months in advance is fundamentally arbitrary and a violation of the 'right to privacy'.

- m) That no compelling circumstances have been brought forth by the State to justify using its emergency executive powers to promulgate the Impugned Ordinance
- n) That apart from the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 and the Uttarakhand Freedom of Religion Act, 2018, state of Himachal Pradesh (Himachal Pradesh Freedom of Religion Act, 2019) has also enacted a similar legislation, while a similar legislation is in the pipeline for the State of Madhya Pradesh where the cabinet cleared the Madhya Pradesh Freedom of Religion Bill 2020. It is submitted that all the grounds raised in the present application shall apply to these similar legislations/bills, which also ought to be declared unconstitutional.

9. That in light of the abovementioned averments, the Applicant Organization ought to be permitted to be impleaded in the present matter.

10. The Applicant states that the present Application is being filed *bona fide* and in the interests of justice.

11. The Applicant has not filed any other or similar application on similar issue before this Hon'ble Court or before any other Court in the country.

PRAYER

It, is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (i) allow the Applicant to be impleaded as party Respondent in Writ Petition (Criminal) No. 405 of 2020; and/or
- (ii) pass such other or further order or orders or such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Applicant

New Delhi
Filed on: 06.01.2021