

## **Personal choices, the Constitution's endurance - Salamat Ansari**

### **What is the issue?**

- The Allahabad High Court cancelled a case against a Muslim man (Salamat Ansari), filed by the parents of his wife (Priyanka Kharwar (now Alia)) who converted to Islam before marrying him.
- The verdict comes as a reminder of the Constitution's cherished values in the backdrop of some state governments bringing in legislations against what they call as "Love Jihad".

### **What is the case about?**

- The petitioners, Salamat Ansari and Priyanka Kharwar, had approached the High Court seeking orders to quash the FIR that was lodged against them.
- The FIR alleged that a series of crimes had been committed.
  - These included one under Section 366 of the IPC, which criminalises the abduction of a woman with the intent to compel her to marry against her will.
- The petitioners claimed that they were both adults competent to contract a marriage.
- They had in fact wedded long before in August 2019, as per Muslim rites and ceremonies, only after Ms. Kharwar had converted to Islam.

### **What were the State's arguments?**

- The State resisted the claims of the couple that they married by will.
- It argued that Mr. Ansari and Ms. Kharwar's partnership had no sanctity in the law.
- It held that a conversion with a singular aim of getting married was illegitimate.
- In making this argument, the government relied on a pair of judgments delivered by single judges of the Allahabad High Court.
  - On the judgment in *Noor Jahan v. State of U.P.* (2014), the HC held that a conversion by an individual to Islam was valid only when it was predicated on a "change of heart" and on an "honest conviction" in the tenets of the newly adopted religion.
  - Additionally, it ruled that the burden to prove the validity of a

conversion was on the party professing the act.

- Therefore, in the present case, it was argued that it was for the woman to establish that her conversion was borne out of her conscience.

### **What is the HC ruling now?**

- The Division Bench rejected the above theory.
- It held that the judgment in Noor Jahan was incorrectly delivered.
- The court said that it did not see “Priyanka Kharwar and Salamat as Hindu and Muslim.”
- It rather saw them “as two grown up individuals who out of their own free will and choice are living together peacefully and happily...”

### **What are the HC's observations?**

- The High Court declared that religious conversions, even when made solely for the purposes of marriage, constituted a valid exercise of a person’s liberties.
- It ruled that the freedom to live with a person of one’s choice is intrinsic to the fundamental right to life and personal liberty.
- The order thus recognised that Indian society rested on the foundations of individual dignity.
  - This means that a person’s freedom is not conditional on the caste, creed or religion that her partner might claim to profess.
- By invoking the SC’s judgment in Puttaswamy case, the HC held that an individual’s ability to control vital aspects of her life inheres in her right to privacy.
  - This promise includes the preservation of decisional autonomy, on matters including of “personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation”.
- According to the HC, the Constitution is violated every time matters of intimate and personal choice are made vulnerable to the paternal whims of the state.

### **What is the underlying idea?**

- Article 25 of the Constitution expressly protects the choices that individuals make.
- In addition to the right freely to profess, practise and propagate religion, it guarantees to every person the freedom of conscience.
- Conscience is certainly not something that the state can examine as a function of its sovereign authority.

- The right to freedom is promised because questions of conscience (which include choices of faith) are matters of ethical autonomy.
- The provision's ultimate purpose is to allow individuals the freedom to lead their lives as they please.

### **What is the U.P. government's response though?**

- Already, seemingly in response to the judgment, the U.P. government has introduced an ordinance.
- It makes not only religious conversions that are forcefully obtained an offence but that also declares void any conversion found to be made solely for marriage.
- In supporting the law, the State will likely rely on a 1977 Supreme Court judgment in *Rev. Stainislaus v. State of Madhya Pradesh*.
- There, the Court upheld, on grounds of public order, two of the earliest anti-conversion statutes in India:
  1. the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968
  2. the Orissa Freedom of Religion Act, 1967
  - These laws required that a District Magistrate be informed each time a conversion was made.
  - They also prohibited any conversion that was obtained through fraud or illegal inducement.

**Source: The Hindu**

