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

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