HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Habeas Corpus No. 149 / 2017

Chirag Singhvi S/o Shri Narpat Singhvi, Aged About 26 Years, By Cast Oswal, R/o 165, Shanti Sagar, Narpat Nagar, Pal Road, Jodhpur

----Petitioner

Versus

1. State of Rajasthan Through Police Commissioner, Jodhpur

2. Faiez Modi S/o Aijaj Modi, By Caste Modi, R/o Behind Pakija Chakki, Kamla Nehru Nagar, Jodhpur.

----Respondents

For Petitioner(s) : Mr. MR Singhvi, Senior Advocate with Mr. Bhavit Sharma, Mr. Hukum Singh, Mr. NK Bohra, Mr. Sheetal Kumbhat, Mr. Gokulesh Bohra.

For Respondent(s) : Mr. SK Vyas, AAG with Mr. Hanuman Singh Gaur

Mr. Mahesh Bora, Senior Advocate with Mr. Nishant Bora, Mr. A.R. Malkani

Mr. Laxmi Narayan, Addl. S.P., Jodhpur

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

HON'BLE DR. JUSTICE VIRENDRA KUMAR MATHUR

Judgment

Per Hon'ble Mr. Justice Gopal Krishan Vyas

Date of Judgment :: 15th Dec., 2017

In this habeas corpus writ petition filed by the petitioner Chirag Singhvi, following prayer is made by the petitioner, which reads as under:

> "Hence, it is prayed on behalf of the petitioner that a writ of Habeas Corpus may be issued against the non-petitioner to bring the corpus before the Hon'ble Court and thereafter the body of the corpus may be handed over to the petitioner and set free from the illegal, wrongful and unlawful confinement of the non-petitioner no.2 and any other writ, direction or order with this court thinks proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

As per the facts of the case pleaded in the writ petition, the sister of the petitioner Payal Singhvi D/o Narpat Singhvi, resident of Shanti Sagar, Narpat Nagar, Pal Road, Jodhpur after passing M.Com Examination, preparing for RAS Examination, but from last 4-5 years whenever she was going to the college, the non-petitioner no.2, who was in habit of stalking her, tried to molest her. A complaint was made by Payal Singhvi to the petitioner and family members, therefore, non-petitioner Faiez Modi and his family members were instructed by the petitioner not to act in this manner, but the respondent no.2 somehow obtained mobile number of Payal Singhvi from other sources and used to send obscene messages to her sister. It is also contended that respondent no.2 Faiez Modi is not enjoying good character and having companies of the persons indulged in illegal criminal activities, therefore, due to fear, no complaint was made to the Police against the respondent no.2, but subsequently an information was given by Payal Singhvi that respondent no.2 Faiez Modi took certain photographs of her when she was going to college and on the basis of those photographs he was blackmailing her and sending obscene messages and gave threat that he will publish these photographs on internet/social media to disrepute you. It is also stated in the petition that Payal Singhvi

(detenue) was very fearful, therefore sometime, took money and gave to the respondent no.2 to satisfy the demand and with the hope that photographs which is in possession of respondent no.2 would be retuned, but unfortunately, even after taking money Faiez Modi did not return those photographs. Upon above fact, an oral complaint was made to the concerned Police Station, but police officers told that it is better for you to keep silence otherwise reputation of Payal Singhvi would be at stake and she may be disrepute in public at large, due to said reason, no written complaint was made to the police.

It is further pleaded in the writ petition that from last 4-5 months, the detenue Payal Singhvi told her mother that Faiez Modi has tried to kidnap her when she was going to college and returning from the college alongwith certain friends and forcibly took her in a car and obtained signatures upon some papers before one Mulla Maulvi and thereafter, left to go her house. According to the petitioner, a complaint was made by the detenue that non-petitioner no.2 perhaps prepared false and forged documents of her marriage. In the writ petition it is stated that on 25.10.2017 she was forcibly taken away by Faiez Modi alongwith his criminal gang. The family of the petitioner belongs to Jain community and peaceful citizen of Jodhpur City, therefore, the non-petitioner no.2 took advantage of peaceful family and kidnapped her. After kidnapping Payal Singhvi, she never returned at home, therefore, a search was made by the family members and petitioner and they went to the house of non-petitioner no.2 where his house was found to be locked, therefore,

they went to the Police Station, Pratapnagar, Jodhpur to lodge report against the non-petitioner no.2, but no action was taken by the SHO Police Station, Pratapnagar. Thereafter, petitioner approached the Police Commissioner, Jodhpur where he was informed by the Police Commissioner that detenue and non-petitioner no.2 appeared before him and asked for protection and further informed that probably, the non-petitioner no.2 and Payal Singhvi (detenue) has solemnized marriage according to Muslim religion.

According to the petitioner, his sister Payal Singhvi used to do her daily religious duty till 25.10.2017 and goes to temple and other places, so also, attended the speeches of Jain Munnis because she is having full faith in her own Jain religion, but on 25.10.2017 she was forcibly kidnapped by the respondent no.2 and now she is in illegal detention, therefore, prayed that police may be directed to recover the corpus Payal Singhvi.

As per allegation of the petitioner in the Jodhpur city, the members of minority community are targeting the girls aged about 16-17 years and subsequently, when they attained the age of 18-19 years, they are preparing false forged documents and photographs of the girls and with the connivance of Mulla and Molvis and other religious groups used to convert the hindu girls to the muslim religion. It is also submitted that Hon'ble Supreme Court took serious view against such radical persons and directed the National Investigation Agency how in State of Kerala Hindu girls are going to covert in other religion. The situation existing in Kerala is now created in Jodhpur city also, therefore, it

is prayed that detenue who is in illegal detention of non-petitioner no.2 against her will, as such no other efficacious remedy except to file this writ petition, is available so as to get release his sister Payal Singhvi from the illegal detention of respondent no.2 and prayed to take action.

After issuance of notice, corpus was produced by the police in the court on 1.11.2017. On that date, some documents alongwith case diary were produced so as to prove the fact that Nikah of Payal Singhvi has been solemnized. The Addl. Advocate General was directed to file reply within four days and after perusing the documents when it is revealed that Payal Singhvi belongs belonging to Hindu (Jain) community and Faiez Modi (respondent no.2) belongs to Muslim community and serious doubt found in the document of Nikah and conversion of religion by the detenue Payal Singhvi, therefore, following question was framed:

> "**Whether without any procedure or rule conversion of religion can be changed or not so also in this case whether the fact of 'Nikah' of Payal Singhvi is established on the basis of self contradictory documents on record or not?"**

Further after, ascertaining the willingness of corpus, Payal Singhvi was sent to the Nari Niketan, Jodhpur for a period of one week with direction to produce before the Court on 7.11.2017. The State Government was directed to provide all the facilities to the corpus Payal Singhvi at Nari Niketan, Jodhpur and further directed that no person either of the parties shall be allowed to

meet her and provide adequate security to the family members of Faiez Modi and family members of the petitioner.

On 7.11.2017 a reply was filed by the State and after recording willingness of the corpus Payal Singhvi and upon the fact that she is major, she was set at free and permitted to go as per her will.

Learned counsel for the petitioner vehemently argued that corpus Payal Singhvi is under the threat and documents of Nikah are seriously doubtful because as per Holly Quran in Sura-II Ayat 221 no marriage can be solemnized before valid conversion and there is no documentary evidence on record to prove that detenue Payal Singhvi changed her religion in accordance with Holly Quran, therefore, such marriage is no marriage in eye of law. It is also argued that although it is writ of habeas corpus against the illegal detention of the corpus Payal Singhvi, but if this High Court finds injustice or it appears that illegal activity of forcible change of religion is going on then this Court can exercise its jurisdiction under Article 226 of the Constitution of India beyond the prayer made in the writ petition. Therefore, prayed that the instant writ petition may be allowed and some direction may be issued in this regard further prayed that the so called Nikah may also be declared illegal and without prejudice to above prayer, it is submitted that as per the reply filed by the State Government, the law governing the field of religion conversion has been considered in the Cabinet meeting held on 24.3.2006 and approval was granted with some amendments in the Rajasthan Dharma Swatantrya Act, 2006

and said Act was led before the Rajasthan Legislative Assembly on 7.4.2006 and thereafter, the Act was sent for the assent of Her Excellency the Governor, who while withholding the assent reserved it for the assent of the Hon'ble President of India. It is also replied by the State Government in its reply that Attorney General, Government of India advised to examine the matter by the State Government on the points suggested and opinion of the Advocate General has already been obtained and after meeting with the shortcomings as pointed out by the Attorney General, Government of India, the matter has been moved to the Home Department, Government of India for assent of the Hon'ble President of India on the Act of 2006 and further stated that the question of assent is presently pending at the level of Government of India, therefore, it is a case in which State Government is also very serious to frame certain rules to govern the conversion of religion but matter is pending since 2006. Therefore, some guidelines may kindly be issued in this regard so as to protect forcible conversion of religion by the girls from one religion to another religion of the society.

In support of his arguments, learned counsel for the petitioner invited our attention towards certain judgments on different points which are as follows:

A. **<u>It is the duty of the High Court to issue certain guidelines wherever it finds injustice:</u>**

(i) Dwarka Nath Vs. Income Tax Officer, Special Circle, D-Ward, Kanpur & Anrs reported in AIR 1966 SC 81

(ii) Comptroller and Auditor-General of India, Gain Prakash Vs. K.S. Jagannathan & Anr reported in AIR 1987 SC 537

(iii) Union of India & Anr. Vs. S.B. Vohra & Ors. reported in AIR 2004 SC 1402

(iv) Binny Ltd & Anr. Vs. V. Sadasivan & Ors reported in AIR 2005 SC 3202

B. <u>For change of religion/public order etc:</u>

(i) Rev. Stainislaus Vs. State of Madhya Pradesh & ors., reported in AIR 1977 SC 908

(ii) Sarla Mudgal (Smt.) , President, Kalayani & Ors. Vs. Union of India & Ors. reported in AIR 1995 SC 1531

(iii) Lily Thoms Vs. Union of India, reported in AIR 2000 SC 1650

(iv) Aman Beg Vs. State of M.P. & Ors , writ petition (cr.) No.142/2016, decided on 3.11.2017

(v) Smt. Noor Jahan Begum @ Anjali Mishra & Anr. VS. State of UP & Ors. (Allahabad High Court), writ petition No.57068/2014, decided on 16.12.2014

C. <u>Relief beyond prayer/moulding relief:</u>

(i) Chiranjit Lal Chowdhuri Vs. Union of India, reported in AIR 1951 SC 41

(ii) Union of India Vs. Sankalchand Himatlal Sheth reported in (1977) 4 SCC 193

(iii) B.R. Ramabhadriah Vs. Secy. F&A Deptt, AP reported in (1981) 3 SCC 528

(iv) M.C. Mehta & Anr. Vs. Union of India & Ors reported in AIR 1987 SC 1086

(v) B.C. Chaturvedi Vs. Union of India reported in (1995) 6 SCC 749

(vi) Dy. Transport Commissioner & Secretary Vs. Kishore reported in (2005) 11 SC 541

In addition to above judgments, the learned counsel for the petitioner invited our attention towards Surah-II Ayat 221 of holly Quran and the Press and Registration of Books Act, 1867 and submitted that certain guidelines may be issued to check forcible conversion of religion for the purpose of solemnizing marriage only till enactment of the Act by the State Legislature.

Per contra, learned Addl. Advocate General Sh. S.K. Vyas vehemently argued that all allegations levelled in the writ petition are not correct because in the FIR no.441/2017 registered on 30.10.2017 during investigation, it is found that Payal Singhvi, sister of the petitioner was not in illegal detention. More so, as per the documents collected during investigation, it is found that Nikah of Payal Singhvi was solemnized with Faiez Modi as per Muslim law and before her "Nikah" Payal Singhvi changed her religion and opted Islam religion to solemnize Nikah being major girl. Therefore, this writ petition may kindly be dismissed. It is also argued that State Government while considering seriousness of the situation, think it proper to regulate the conversion process of religion and

framed Rajasthan Dharma Swatantrya Act, 2006 and that Act was considered by the State Cabinet in its meeting held on 24.3.2006 and granted approval with some amendments. Thereafter, the said Act was led before the Rajasthan Legislative Assembly where it was passed on 7.4.2006 and sent for assent to Her Excellency the Governor at the relevant point of time, but while withholding the assent reserved it for the assent of the His Excellency Hon'ble President of India. Further, replied that Attorney General, Government of India advised to examine the matter by State Government on the points suggested. Accordingly, opinion of the Advocate General was obtained and after meeting with the shortcomings as pointed out by the Attorney General, Government of India, the matter has been moved to the Home Department, Government of India for assent of the Hon'ble President of India on the Act of 2006 where such matter is pending.

Learned Addl. Advocate General submits that as and when the assent will be given by the President of India, the necessary action will be taken to check forcible conversion in accordance with law and to implement the provision of Act.

To consider the prayer of petitioner, to issue certain guidelines, it is submitted that no such direction can be given at this stage, because the matter is under active consideration.

The learned Senior Advocate sh. Mahesh Bora appearing on behalf of the respondent no.2 submits that all the allegations levelled by the petitioner in his writ petition are false. More so, the detnue and the respondent no.2 are knowing each other

from last 10 years because they were under study in Sardar Children Public School. The friendship of the respondent no.2 and the detenue turned into more intimated relationship and eventually the respondent no.2 and the detenue with their own free will decided to marry, therefore, the detenue and the respondent no.2 solemnized "Nikah" on 14.4.2017 after conversion of religion by Payal Singhvi. For some time, detenue stayed in her parental house and subsequently, she went to live with her husband's house but petitioner and parents of the detenue started pressurizing the detenue to dissolve the marriage and to come back at home. Therefore, a complaint was filed by the detenue in the court of ACJM No.2, Jodhpur under Section 323, 324, 341, 384, 451 and 506/34 IPC in which statement of detenue (complainant) were recorded by the learned ACJM no.2 on 25.10.2017 in which wife of respondent no.2 Arifa @ Payal Singhvi gave statement under Section 200 Cr.P.C. that she got married with respondent no.2 around 7-8 months back as per her free will but my father and brothers are harassing me and my husband continuously. It is further argued that detenue was pressurized by her family members to break the marriage and come back home but she is happy in her marriage life.

It is also submitted by the Senior Advocate Mr. Bora that after recording above statements, the petitioner as well as his family members are harassing Payal Singhvi @ Arifa and filed false complaint before the Dy. Commissioner of Police (West), Jodhpur. Sh. Bora submits that Arifa @ Payal Singhvi appeared

before this Court also and specifically said that she is not in illegal detention, therefore, now there is no question to go further in this habeas corpus petition because this writ petition has become infructuous.

It is further argued by Mr. Bora that scope of this writ petition cannot be enlarged so as to accept the prayer to issue guidelines in spite of the fact that the Act has been enacted by the State Legislature, which is sent to His Excellency President of India for assent. While inviting attention towards Article 25 of the Constitution of India, it is submitted that there is fundamental right granted by the Constitution of India which gives right to freedom to the citizen for following any religion, therefore, it is obvious that desire of a person to have a faith in particular religion cannot be restricted by the guidelines, therefore, the relief as prayed for by the learned counsel for the petitioner which is not even specifically prayed in the prayer clause of the writ petition cannot be granted because scope of this writ petition is only to the extent of illegal detention. It is also argued that guidelines can be given by the Hon'ble Supreme Court under Article 142 of the Constitution of India. No such jurisdiction left with High Court under Article 226 of the Constitution of India.

The crux of arguments of learned counsel for the respondent no.2 is that this writ petition become infrcutous and in absence of any prayer in the writ petition to issue guidelines, till formation of rules or Act, no such guidelines can be issued because if such type of guidelines will be issued then certainly it

will effect fundamental right of the freedom of religion of the citizens granted under Article 25 of the Constitution of India. Therefore, it is prayed that the instant writ petition may kindly be dismissed with costs.

After hearing learned counsel for the parties, we have perused the writ petition as well as reply filed by the State and reply filed by the respondent no.2 Faiez Modi, so also, rejoinder to the reply filed by the respondent no.2 by the petitioner. There is no dispute that in this habeas corpus petition, the corpus Rayal Singhvi was recovered and produced before us and she was permitted to go as per her will because she is major and expressed before the Court that she is not in illegal detention of any person. There is specific pleadings in the writ petition that now a days the members of minority community targeting the girls of aged 16-17 years of Hindu and Jain community and subsequently, as soon as, those girls attains the age of 18-19 years, after converting them to the minority community forcibly preparing false and forged documents to solemnize marriage of teenagers. We have perused the case diary in which investigation has been conducted by the police in FIR no.441/2017 registered at Police Station Pratapnagar, Jodhpur under Section 342, 366, 384 and 354D IPC. As per evidence came on record the "Nikah" of Faiez Modi and Arifa @ Payal Singhvi was solemnized before Molvi Sh. Sayyed Mohiyuddin Ashraf, who has categorically stated in his statement that on 13.4.2017 Valik Mohsin and Faiez Modi met me and shown some documents and asked to solemnize "Nikah" of Faiez

Modi, but on that date, I was busy, therefore, I told them to come back on 14.4.2017. The statement of Molvi Sh. Sayyed Mohiyuddin Ashraf were recorded by the Addl. Superintendent of Police. Upon perusal of the statements of Molvi Sh. Sayyed Mohiyuddin Ashraf it is revealed that on 14.4.2017, the proceedings of conversion of religion and Nikah were also conducted by Molvi Sh. Sayyed Mohiyuddin Ashraf within 20 minutes after obtaining affidavits from Faiez Modi and Arifa@ Payal Singhvi for the purpose of ascertaining their age and proceedings for conversion of religion of Arifa @ Payal Singhvi was undertaken by the Molvi. It is also deposed by the Molvi that before marriage the proceedings for conversion of relgion were also conducted as per Sura-II Ayat 221 of the Holy Quran. Meaning thereby, it is admitted by Molvi Sh. Sayyed Mohiyuddin Ashraf that before solemnizing Nikah of respondent no.2 Faiez Modi and Arifa @ Payal Singhvi, the necessary formality for change of conversion as provided under Sura-II Ayat 221 of Holy Quran conducted, but it is very important aspect of the matter that within half an hour, all the proceedings including change of conversion and "Nikah" was completed by Molvi Sh. Sayyed Mohiyuddin Ashraf . It is also worthwhile to observe that it was well within the knowledge of Molvi Sh. Sayyed Mohiyuddin Ashraf that Payal Singhvi is belonging to Hindu Jain community, therefore, without any provision for taking affidavit, the affidavit was taken by him so as to confirm the willingness of Payal Singh @ Arifa for conversion of religion and "Nikah".

In view of the above, it is obvious that conversion of religion of Payal Singh took place as per the provisions of Holy Quran. In the statement following facts were disclosed by the Molvi Sh. Sayyed Mohiyuddin Ashraf, which reads as under:-

> "…. इस्लाम धर्म के अनुसार अगर लड़की बालिग हो तो उसके माता पिता को निकाह के समय उपस्थित रहने की आवश्यकता नहीं है। इस्लाम धर्म के अनुसार निकाह करने वाले लड़का–लड़की दोनों मुसलमान होने चाहिये। अगर कोई लड़की हिन्दु या गैर मुस्लिम है और वह इस्लाम धर्म स्वीकार कर लेती है तो उसको मुस्लिम युवक से निकाह हो सकता है। ऐसी लड़की से इस्लाम धर्म स्वीकार करने बाबत एक शपथ पत्र लिया जाता है। मैंने आरिफा उर्फ पायल से धर्म परिवर्तन का शपथ पत्र लिया था। मैंने फाईज मोदी व आरिफा उर्फ पायल को वुज्जु करवाकर कलमा पढाया, कुरान की चंद आयतें पढी, जिसे खुतबा–ए–निकाह कहते है। इसके बाद मैंने लड़की से निकाह बाबत इजाजतनामा लिया, जिसे इजाब कहते है। इसके बाद मैंने लड़की से निकाह बाबत इजाजतनामा लिया, जिसे इजाब कहते है। लड़की आरिफा ने निकाह कबूत बाबत अपनी सहमति दी, फिर फाईज मोदी से निकाह कबूल करवाकर दुआ करवायी गई। निकाह करवाने में 20–25 मिनट समय लगा था। निकाल करवाकर निकाहनामा बनाया गया।"

Upon perusal of the aforesaid statement recorded by the police in the investigation of FIR no.441/2017, it is abundantly clear those whole proceedings for conversion of religion and Nikah was completed within 20-25 minutes by Molvi Sh. Sayyed Mohiyuddin Ashraf. In this writ petition on 1.11.2017 a question was framed whether without any procedure or rule, conversion of religion can be changed or not so also in this case, whether the fact of Nikah of Payal Singhvi is established on the basis of self-contradictory documents nor not.

Before deciding the aforesaid question, we have considered the arguments of the learned Senior Counsel Sh. Mahesh Bora

whether in this habeas corpus petition, the guidelines can be issued because the corpus herself appeared before the court and submits that she is not in illegal detention, so also, her marriage has been solemnized after conversion of her religion. To consider the aforesaid objection of Senior Advocate Sh. Mahesh Board, we have perused the Article 226 of the Constitution of India, which reads as under:

"226. Power of High Courts to issue certain writs :- (1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period

of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[(4)] The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

There is no dispute that under article 226 of the Constitution of India, writ of habeas corpus, mandamus prohibition, quo waranto and certiorari can be issued and this writ petition has been filed under Article 226 of the Constitution of India in which in addition to the prayer with regard to release of corpus from illegal detention, a prayer has been made that "any other writ, direction or order, which this Court thinks proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner." Therefore, it is obvious that any other writ can be issued in the facts and circumstances of the case for public at large and in favour of the petitioner because this Court cannot sit as silent spectator not to deal the problem which affects the atmosphere of the society as a whole.

For exercise of jurisdiction under Article 226 of the Constitution of India, in case of **Dwarka Nath Vs. Income Tax Officer, Special Circle D Ward, Kanpur and another reported in AIR 1966 SC 81**, following adjudication is made by the Hon'ble Supreme Court in para no.4 of the judgment, which reads as under:

"[4] We shall first take the preliminary objection, for it we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:

".....every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article thorough defined channels. This interpretation has been accepted by this Court in T. C. Basappa v. Nagappa, 1955-1 SCR 250 : (AIR 1954 SC 440) and Irani v. State of Madras, 1962-(2) SCR 169: (AIR 1961 SC 1731)."

Similarly in case of **Comptroller and Auditor General of India, Gain Prakash, New Delhi and Another Vs. K.S. Jagannathan and another** reported in **AIR 1987 SC 537**, the

Hon'ble Supreme Court decided the question in para no.18 of the judgment, which reads as under:

> **"18. The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus. was the relief prayed for by the Respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath, Hindu Undivided Family v. Income-Tax Officer, Special Circle, Kanpur, and another, [1965] 3 S.C.R. 536, 540 this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In Hochtief Gammon v. State of Orissa & Ors., [1976] 1 S.C.R. 667, 676 this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers.**

In the case of **Union of India and another Vs. S.B. Vohra and others** reported in **AIR 2004 SC 1402**, in para no.25 of the judgment, the following adjudication is made by the Hon'ble Supreme Court, which reads as under:

"25. However, we may notice that in the Comptroller and Auditor General of India and Anr. Vs. K.S. Jagannathan and another [(1986) 2 SCC 679 : 1987 SC 537] this Court upon considering a large number of decisions including Dwarkanath Vs. Income-Tax Officer, Special Circle, Kanpur [(1965) 3 SCR 536], Hochtief Gammon Vs. State of Orissa [(1976) 1 SCR 667], Mayor of Rochester Vs. Regina [1858 EB & E 1024], The King Vs. Revising Barrister for the Borough of Hanley [(1912) 3 KB 518], Padfield Vs. Minister of Agriculture, Fisheries and Food [1968 AC 997] and Halsbury's Laws of England, Fourth Edition, Volume I, paragraph 89 observed:

"<u>There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court</u> can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

[Emphasis supplied]"

In case of **Binny Ltd.and another Vs. Sadasivam and others** reported in **AIR 2005 SC 3202**, the following adjudication is made by the Hon'ble Supreme Court in para no.9, which reads as under:

"9. Superior Court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subha Rao J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath Vs. Income Tax Officer 1965(3) SCR 536 at pages 540-41: "This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. <u>That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution of India with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England</u> with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself...."

In view of the law laid down by the Hon'ble Supreme Court, we find that there is no strength in the argument of learned senior counsel appearing for the respondent no.2 that

this writ petition has become infrctuous and no direction can be given for guidelines till formation of the Act with regard to change the religion because in all the judgments, it is held that High Courts of India are empowered under Article 226 of the Constitution of India to exercise the power of judicial review to correct administration under this jurisdiction, the High Court can issue an direction, order or writ for enforcement of any of the right conferred by Part-III or for any other purpose. The jurisdiction conferred on High Court under Article 226 of the Constitution of India is very wide, therefore, the objection of learned Senior Counsel Sh. Mahesh Bora is hereby rejected.

To consider the prayer of the petitioner to issue guidelines, we have perused the reply of the State Government in which it is accepted by the State Government that law governing field of religion conversion a draft of Rajasthan Dharma Swatantrya Act, 2006 was prepared and considered in the Cabinet meeting of State of Rajasthan on 24.3.2006 and approval was granted with some amendments and, thereafter, the said Act was led before the Rajasthan Legislative Assembly where the Act was passed on 7.4.2006. As per the reply, the said Act was sent for the assent of Her Excellency the Governor, who while withholding the assent reserved it for the assent of the Hon'ble President of India. It is also submitted in the reply that Attorney General of Government of India advised to examine the matter by the State Government on the points suggested and opinion of the Advocate General of State of Rajasthan was obtained and after meeting with the shortcomings as pointed out by the Attorney

General, Government of India, the matter was moved to the Home Department, Government of India for the purpose of assent of the Hon'ble President of India on the Act of 2006.

The aforesaid reply loudly speaks that State Government is also aware about the problem of forcible conversion of religion and to solve the said problem it is felt necessary to enact the law, therefore, Rajasthan Dharma Swatantrya Act, 2006 was passed by the State Legislature, but since the year 2006, the matter is pending for want of assent.

Upon consideration of aforesaid reply, we are of the firm opinion that there is no power left with the courts to legislate the law because it is the duty of the Legislature to frame the law to protect peace in the society because courts are having jurisdiction to interpret the law, so also, it is the duty of the court under Article 226 of the Constitution of India to protect the fundamental rights of the citizen of every religion because framers of the Constitution purposely included Article 25 of the Constitution of India in which provides right to freedom of religion. The Article 25 of the Constitution of India is as follows:

> **"<u>25. Freedom of conscience and free profession, practice and propagation of religion</u>.-(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion**
>
> **(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-**
>
> **(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;**

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Explanation I.- **The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion**

Explanation II.- **In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."**

It is also worthwhile to observe here that under Article 26 of the Constitution of India, a right is given to citizen to manage religious affairs in the matter of religion. Article 26 of the Constitution of India is also reproduced hereinbelow:

"<u>26. Freedom to manage religious affairs</u>.- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

Upon perusal of both the Articles it is obvious that more emphasis is given by the framers of the Constitution while granting fundamental right of freedom of religion subject to public order. In this petition, it emerges from the record that State Legislature for regulating serious problem of forcible conversion of religion passed the Rajasthan Dharma Swatantrya Act, 2006 for which still assent is awaited from His Excellency the President of India.

In case of **Lily Thomas, etc. etc Vs. Union of India and others** reported in **AIR 2000 SC 1650**, the Hon'ble Supreme Court held that religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Para no.38 of the judgment is as follows:

"38. Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super-natural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu Law, Marriage is a sacrament. Both have to be preserved."

Similarly, in recent case of **Aman Beg Vs. The State of Madhya Pradesh & Ors (Writ petition (s) (Criminal) No(s). 142/2016, decided on 3.11.2017)**, the Hon'ble Supreme Court passed the following order, which reads as under:

"UPON hearing the counsel the court made the following

O R D E R

The claim of the petitioner is that he was married to daughter of respondent no.4 after converting his religion. However, respondent No.4 claims that his daughter was minor at the time of

marriage and on that version the police separated the couple.

According to the petitioner, daughter of respondent No.4 was not juvenile and they were illegally separated.

Learned counsel for the respondent No.4 states that there is no valid conversion of the petitioner and it remains a disputed question. He has also relied upon Madhya Pradesh Freedom of Religion Act, 1968 which requires a procedure for conversion of religion.

Whether the petitioner has factually converted his religion and whether conversion only to marriage is in accordance with law is a dispute which require adjudication. In absence of such adjudication, it is not possible to accept that a valid marriage has taken place between the petitioner and the daughter of respondent No.4 so as to grant the relief sought.

Accordingly, this petition is dismissed without prejudice to any other remedy in accordance with law.

Pending applications, if any, shall also stand disposed of."

In the aforesaid judgment of Aman Beg the Hon'ble Supreme Court categorically observed, whether, the petitioner has factually converted his religion and whether conversion only to marriage is in accordance with law is a dispute which requires adjudication. In absence of such adjudication, it is not possible to accept that a valid marriage has taken place between the petitioner and the daughter of the respondent No.4 so as to grant the relief sought for.

In view of the above, it is admitted position in the reply that State Legislature with a view to solve the problem of forcible conversion of religion applied its mind in the year 2006 and proceeded to enact the law known as Rajasthan Dharma Swatantrya Act, 2006. It is true that under Article 25 of the Constitution of India there is fundamental right granted to every

citizen to profess, practise and propagate his religion freely, but it does not mean that a citizen of particular religion can forcibly compel other citizen to change his/her religion so as to solemnize the marriage only because after conversion of religion, a citizen bears his/her all rights which is available in the converted religion and to relinquish his/her right of the parent religion. Therefore, obviously, no person can be compelled to change religion only to solemnize marriage, therefore conversion of religion only for the purpose of solemnizing forcible marriage, is not permissible under the fundamental right as enshrined under Article 25 of the Constitution of India. In the Sura-II Ayat 221 of Holy Quran a person of muslim religion should have faith in Islam religion for all purpose not only for marriage.

In view of the above discussion, we have no hesitation to hold that till enforcement of the Act of 2006, some guidelines are necessary to check the problem of forcible conversion of religion for the purpose of solemnizing marriage only.

To consider the question whether the relief beyond the prayer can be granted or not, we have considered the judgments cited by the learned counsel for the petitioner.

In the case of **B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others** reported in **(1981) 3 SCC 528**, the Hon'ble Supreme Court held that it is well established principle that in an action where a party has prayed for larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The court

can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to meet out justice in the case. Para no.5 of the said judgment is as under:

"5. It is true that the writ petition contained a prayer for the quashing of the gradation list in so far as it related to the inter-se ranking of the petitioner vis-a-vis respondents Nos. 3 to 8 and the petitioner (appellant) had also sought the issuance of a writ of mandamus directing respondents Nos. 1 and 2 to forbear from implementing or acting upon the said gradation list. But subsequent to the institution of the writ petition, the Central Government has refixed the ranks of respondents Nos. 3, 4, 5, 7 and 8 (Telengana officers) and placed them below the appellant thereby redressing the grievance of the appellant in so far as it pertained to the ranking of the aforesaid respondents. It therefore became unnecessary for the appellant to pursue his claim for relief with respect to the ranks assigned to those five respondents. It was under those circumstances that the appellant submitted before the learned single judge of the High Court, at the time of final hearing of the writ petition, that he was pressing the writ petition only in so far as it related to his claim for seniority over the 6th respondent. We fail to see how the fact that the appellant had sought in the writ petition the issuance of a writ of mandamus directing respondents 1 and 2 to forbear from implementing or acting upon the provisional gradation list will operate to preclude him from seeking a lesser relief, namely, the quashing of the list only so far as it pertains to the fixation of the inter-se seniority between himself and the 6th respondent. The material facts and circumstances had undergone a substantial change subsequent to the filing of the original petition and it was in consequence thereof that it had become unnecessary for the petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring this crucial aspect, the Division Bench of the High Court has also lost sight of the well established principle that in an action where a party has prayed for a larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the

Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. We do not, therefore, find it possible to uphold the view expressed by the Division Bench of the High Court that since the writ petition was not pressed in so far as it related to the officers belonging to the Telengana region the question of inter-se seniority between the writ petitioner and the 6th respondent should not have been considered by the single judge and the writ petition should have been dismissed."

Similarly in the case of B.C. Chaturvedi Vs. Union of India and others reported in (1995) 6 SCC 749 the Hon'ble Mr. Justice Hansaria while concurring the view of Hon'ble Judges held in para no.20 to 26 as follows:

HANSARIA, J. (*Concurring)* - I am in respepctful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets the case. The first of these relates to the power of the High Court. The to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as dispropotionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the concerned person. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case, AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter.

24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of dismissal, Article 21 gets attracted. And, in view of the inter-dependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case, 1970 (3) SCR 530, which thinking was extended to cases attracting Article 21 in Maneka Gandhi vs. Union of India. AIR 1978 SC 597, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram vs. State of Himachal Pradesh, 1983 (2) SCC 442 also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of

judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.

26. I had expressed my unhappiness qua the first facet of the case, as Chief Justice of the Orissa High Court in paras 20 and 21 of Krishna Chandra v. Union of India, AIR 1992 Orissa 261 (FB), by asking why the power of doing complete justice has been denied to the High Courts ? I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment."

In view of the above adjudication made by the Hon'ble Supreme Court in various pronouncements, it is obvious that no

doubt Article 142 of the Constitution of India has specifically conferred the power of doing complete justice to the Hon'ble Court Supreme Court to achieve, but Hon'ble Supreme Court held that it would be wrong to think that other courts are not to do complete justice between the parties. It is true that while exercising powers under Article 226 of the Constitution of India, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review, but for the for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the relief prayed for. Justice Hansaria while concurring the above principle specifically held that "I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice."

Upon consideration of the entire facts and Articles 25 and 26 of the Constitution of India, we are of the opinion that right to freedom of religion is fundamental right, which cannot be curtailed in any manner. Every citizen has a right to follow the religion as per his will, but at the same time, it is the duty of the court to see that public order should not be disturbed due to forcible conversion of religion for the purpose of solemnizing marriage only.

Admittedly, as per the reply, the State Government is aware about the problem of forcible conversion of religion, therefore, felt it necessary enact Rajasthan Dharma Swatantrya Act, 2006 and said Act has been approved by the Cabinet in its meeting held on 24.3.2006 and passed by the Rajasthan State

Assembly on 7.4.2006 but it has not come into force for want of assent by His Excellency of President of India.

It is also worthwhile to observe that Justice P.V. Reedi (Former Judge, Supreme Court of India) and Chairman of Law Commission of India forwarded 235th Report of Law Commission of India upon the subject of conversion/reconversion to another religion-mode of proof on 27.12.2010 to the Government of India in which following recommendations were made, which reads as under:-

"1. Within a month after the date of conversion, the converted person, if she/he chooses, can sent a declaration to the officer in charge of registration of marriages in the concerned area.

2. The registering official shall exhibit a copy of the declaration on the Notice Board of the office till the date of confirmation.

3. The said declaration shall contain the requisite details viz., the particulars of the convert such as date of birth, permanent address, and present place of residence, father's/husband's name, the religion to which the convert originally belonged and the religion to which he or she converted, the date and place of conversion and nature of the process gone through for conversion.

4. Within 21 days from the date of sending/fling the declaration, the converted individual can appear before the registering officer, established her/his identity and confirm the contents of the declaration.

5. The Registering officer shall record the factum of declaration and confirmation in a register maintain for this purpose. If any objections are notified, he may simply record them i.e., the name and particulars of objector and the nature of objection.

6. Certified copies of declaration, confirmation and the extracts from the register shall be furnished to

the party who gave the declaration or the authorized legal representative, on request."

We are aware of the fact that under Article 25 of the Constitution of India there is fundamental right granted to the citizen for freedom of religion and every citizen of India is entitled to follow any religion, but question arises whether forcible conversion of religion for the purpose of marriage is justified? Obviously, the answer is "NO". It is also admitted position of the case that in some of the religion, without any conversion, marriage can be solemnized, but in some of the religion, marriage cannot be solemnized by the male or female without conversion of religion. In this regard, it is very important to mention here that as per Holy Quran in the muslim religion, no male or female can marry with the person till they believe (worship Allah alone) and therefore, in Sura-2- Ayat 221 following provision made mandatory, which reads as under:

"**221. And do not marry *Al-Mushrikisât* (idolatresses, etc.) till they believe (worship Allâh Alone). And indeed a slave woman who believes is better than a (free) *Mushrikah* (idolatress), even though she pleases you. And give not (your daughters) in marriage to *Al-Mushrikûn* till they believe (in Allâh Alone) and verily, a believing slave is better than a (free) *Mushrik* (idolater), even though he pleases you. Those (*Al-Mushrikûn)* invite you to the fire, but Allâh invites (you) to Paradise and Forgiveness by His Leave, and makes His Ayât (proofs, evidences,**

verses, lessons, signs, revelations etc.) clear to mankind that they may remember."

Likewise in other religion also no male or female person of religion can solemnize marriage with the male or female of other community without conversion of religion. Therefore, it is obvious that in some of the religion it is condition precedent that male or female must be of some religion.

As per contention of the petitioner, now a days the problem of forcible conversion of religion became serious problem because teenagers (male or female) are forcibly converting the religion only for the purpose of solemnizing marriage, therefore, the State Government felt it necessary to enact Rajasthan Dharma Swatantrya Act, 2006, but it has not been implemented for want of assent since 2006, therefore, we are of the opinion that while protecting the fundamental right of freedom under Article 25 of the Constitution of India, some guidelines are necessary to check forcible conversion of religion because religion is a matter of faith and not of logic. The Constitution allows the followers of every religion, to follow their beliefs and religious traditions. The Constitution extends this guarantee because faith constitutes the religious consciousness of the followers. There is no dispute that every citizen has a fundamental right of freedom of religion under Article 25 of the Constitution of India, but at the same time, it is the duty of every citizen to protect the feelings of other religion and not to act contrary to the provisions of Constitution. Therefore, we deem it appropriate to give some guidelines to

check the problem of forcible conversion of religion. Consequently, following guidelines are hereby issued, which reads as under:

(A) An individual, who wishes to change his/her religion will be at liberty to change the same after attaining the age of majority.

(B) One, who intends to change his/her religion should satisfy himself/herself about niceties of conversion of religion.

(C) The authority/person, who is performing ceremony of conversion of religion, should first ascertain whether the person concerned is desirous to change the religion, is having full faith in the newly adopted religion and should also ascertain whether he/she is under any threat of other person or not and if finds that it is forceful conversion, then the authority/person shall give information to the District Collector/SDO/SDM, as the case may be.

(D) The person, who is desirous to change his/her religion, shall give information to the District Collector/SDM/SDO of the concerned city and Sub-Divisional Area before conversion of religion.

(E) The District Collector/SDM/SDO shall put such information upon the Notice Board of its office on the same day.

(F) **The person, who has converted his religion from one religion to another religion, shall solemnize the marriage/Nikah after one week of such conversion of religion. For that, the authority/person concerned before whom such marriage/Nikha is being solemnized, shall ensure whether information of conversion has been made or not and thereafter assist in solemnizing the marriage/Nikah**

(G) **The District Collector upon receiving information of forceful conversion shall take appropriate action in accordance with law, so as to check the forceful conversion.**

(H) **It is made clear that if any person is desirous for publication of change of religion in the Gazette, he/she shall take recourse of Press and Registration of Books Act, 1867.**

(I) **It is also directed that if any marriage in the form of any nomenclature of any religion will be performed after conversion in contravention of above guidelines, then such marriage of any nomenclature can be declare voidable upon complaint of aggrieved party.**

(J) **That aforesaid guidelines shall remain operative until the Act of 2006 or any other act governing the subject matter came into existence in State of**

Rajasthan to protect the forcible conversion of religion.

We are clarifying that this Court is also cautious of the fact that both Payal Singhvi and Faiez Modi are adults and hence, this Court deem it appropriate to declare that above guidelines shall not effect their rights as two individuals are adults and they are at liberty to live their life as per their choice.

Consequently, this habeas corpus petition is herby disposed of with above directions.

(DR. VIRENDRA KUMAR MATHUR)J. (GOPAL KRISHAN VYAS)J.

ps/pa