

I, the deponent above-named do hereby solemnly affirm and state on oath as under:

1. That the deponent is presently posted as Special Secretary, Home, Govt. of U.P., Lucknow and doing parivi on behalf of the respondents in the above noted public interest litigation and as such he is fully acquainted with the facts of the case deposed below.
2. That the deponent has read and understood the contents of the writ petition, its annexures and is in a position to give parawise reply to the various averments made in the aforesaid writ petition.
3. That before giving parawise reply to the various assertions made in the writ petition, it will be necessary to bring on record the following relevant aspects of the matter:

**A: Competency to challenge an ordinance:**

4. That it has been well settled by the Hon'ble Supreme Court that in a Public Interest Litigation the High Courts will not test the vires of a legislation. The law in this regard has been laid down by the Hon'ble Supreme Court in the matter of Guruvayoor Devaswom Managing Committee Vs. C.K. Rajan reported in 2003 (7) SCC Page-546. Under the circumstances the present public interest litigation challenging the vires of the ordinance is not maintainable. The law laid down still holds the field and has not been overruled in any of the subsequent decision of the

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Hon'ble Apex Court. Thus under Article 226 of the Constitution of India while exercising jurisdiction of public interest litigation the High Court will not examine the vires of a legislation.

**B: Locus standi of petitioner:**

5. That the petitioner in the present public interest litigation has given his credentials in Paragraph-10, 11 and 12. In Paragraph-10 the petitioner claims himself to be Coordinator of a social organization called Lok Morcha whereas in Paragraph -11 he claims himself to be a convener of the aforesaid organization. There are no credentials mentioned of the aforesaid organization as to whether it is registered body or not and whether it is a Society or Non-Government Organization and what is the objective mentioned in the Memorandum of the said society; who are the office bearers of the said society/organization; whether the said organization is registered; where is the Head Office of the said organization and whether the registration is valid as on date or not. The petitioner has also not mentioned as to whether as on date he continues to be the office bearer. It is doubtful as at one place the petitioner describes himself to be Coordinator whereas in the next paragraph he describes himself to be convener, The credentials of the petitioner being not in accordance with law laid down by the Hon'ble Supreme Court in the matter of State of Uttaranchal Vs. Balwant Singh Chauhan reported in 2010 (3) SCC Page-402, the petitioner has no locus to maintain the instant public interest litigation. There are several other pronouncements, of the Hon'ble Supreme Court where the locus of the person filing the public interest litigation must be clearly stated so as to make the petition maintainable.

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**C: The impugned ordinance:**

6. The impugned ordinance is known as The U.P. Prohibition of Unlawful Conversion of Religion Ordinance, 2020 being U.P. Ordinance No. 21 of 2020. It has been published in the U.P. Gazette Extraordinary on 27.11.2020. The object sought to be achieved by the aforesaid ordinance is as follows:

*"To provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters connected therewith or incidental thereto."*

A perusal of the aforesaid objective discloses that it aims to prohibit any form of an unlawful conversion actuated by the elements mentioned in the object as follows:

- (i) Misrepresentation, (ii) Force, (iii) Undue influence, (iv) Coercion
- (v) Allurement, (vi) Other fraudulent means and (vii) By marriage.

The Constitution of India abhors any form of forceful conversion particularly in matters of religion. Being a secular State it becomes the foremost duty of the State to protect its citizens from any kind of unlawful or forceful conversion so that the liberty of thought, faith, belief and worship as well as equality of status stands safeguarded thereby assuring the dignity of the individuals. The aforesaid standards have been set in Preamble to the Constitution of India that reads as follows:

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"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE social, economic and political;

**LIBERTY of thought, expression, belief, faith and worship**

**EQUALITY of status and opportunity;**

and to promote among them all

FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation]

*(Emphasis supplied)*

- 7. That it has been well settled that no fundamental right is absolute. Moreover Part-III, Part-IV and Part-IVA of the Constitution of India are to be read together.
- 8. That while construing Article 21 of the Constitution of India with respect to personal liberty and when it comes to matters relating to religion attention is drawn to Articles 25 and 26 of the Constitution of India. In balancing the secular interest of the State and the individual liberty on the other hand, it is necessary to understand the meaning of term 'religion'.

*"There is no consensus as to the definition of the word "Religion". Etymologically, the expression "religion" is the combination of two Latin words; "Re" meaning back and "ligare" meaning to bind. It conveys that "religion" means "bind-back". It is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of God., the creature and ruler to whom his creature owe obedience and love. It is founded on reverence of God*



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and expectation of future rewards and punishment. It is system of divine faith and worship. The quest of man for God is the foundation for religion and its essential function is "the search for God and the finding of God."

9. That in the matter of Shirur Mutt reported in AIR 1954 SC-282 a Constitution Bench of the Hon'ble Supreme Court dealt with the term 'religion'. The relevant extract from the aforesaid judgment is quoted herein below for ready reference;

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress. (Para 18)

The saint and great philosopher Swami Vivekananda said:

"Religion as it is generally taught all over the world is said to be based upon faith and belief and in most cases consists only of different sets of theories and that is the reason why we find all

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*religions quarrelling with one another. These theories are again based upon faith and belief."*

10. That this is merely a bird's eye point of view on the meaning of the word 'religion' which will be elaborated in detail during the course of hearing of the instant public interest litigation as the subject is large enough and cannot be elaborated in great detail in the present counter affidavit. Moreover, it is more a matter of argument than a matter of fact to be stated in the counter affidavit.

11. That the exercise of the right to conscience and to profess, practice religion vis-à-vis the individual right to personal liberty stems the issue of inter fundamental right as well as intra fundamental rights on account of the fact that the matters of religion are left to the community for which freedom of conscience has been guaranteed under Article 25 and 26 of the Constitution of India and personal law relating to religion comes into play.

12. That wherever the personal law comes into play and the individual exercises the right of personal liberty but the personal law of the community to which the individual wants to enter upon by changing his (gender neutral) religion or religious practice causes issue of complexities as the dignity of the individual gets compromised and the individual is not assured the equality of status! Thus what happens is that the individual while exercising the right of personal liberty loses his dignity and equality of status to the religion which he does not adopt but is trying to take benefit of some-sort by being in the society of the member of the other



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religion. In such situation the individual even though has not changed his religion but has only exercised the right of liberty/choice to be in association with member of other religion but is deprived of the benefits as the benefit of the new religion will not be available unless and until a conversion takes place. This conversion will be against the choice of the individual who wants to remain in the society with the member of other religion but does not want to leave his faith. Thus there is a conflict of interest which is an issue addressed by means of the instant legislation wherein the inter fundamental right of the individual are safeguarded.

13. That so far as intra fundamental rights are concerned, these fundamental rights are the rights of an individual vis-à-vis rights of the community. It has been well settled that the community interest will always prevail over the individual interest. The societal interest has been held in catena of decisions by the Hon'ble Supreme Court to be a public interest and wherever there is public interest involved, then the public interest will always be placed at a higher pedestal than the individual interest.

14. That when there is a fear psychosis spread in the community at large and the community itself is endangered and succumbs to the pressure resulting in forceful conversion, under the said circumstances it becomes necessary that the interest of the community as a whole requires protection and no microanalysis of individual interest can be looked into. Here it is to be clarified that the interest is to be distinguished from group thinking. The legislation in question protects public interest and maintain



public order and it is not community thinking but community interest which is being safeguarded by the promulgation of the instant ordinance.

15. That the present legislation is a legislation which has not come into force in a State for the first time. The legislation of identical nature are in existence at least in eight (8) States of the country besides the State of Uttar Pradesh. The States in which the legislation is in force that prohibits unlawful conversion and also contains provision for punishment considering unlawful conversion to be an offence are as follows:

- (i) State of Odisha (*Odisha Freedom of Religion Act, 1967*)
- (ii) State of Madhay Pradesh (*Madhya Pradesh Dharam Swatantra Adhinyam, 1968*)
- (iii) State of Arunachal Pradesh (*Arunachal Pradesh Freedom of Religion Act, 1978*).
- (iv) State of Gujrat (*Gujrat Freedom of Religion Act, 2003*)
- (v) State of Himachal Pradesh (*Himachal Pradesh Freedom of Religion Act, 2006 repealed and reenacted by Himachal Pradesh Freedom of Religion Act, 2019*).
- (vi) State of Chhattisgarh (*Chhattisgarh Dharam Swatantra Adhinyam, 1968 (Freedom of Religion Act, 1968) (Amended by Chhattisgarh Act No. 18 of 2006)*)
- (vii) State of Jharkhand (*Jharkhand Freedom of Religion Act, 2017*)
- (viii) State of Uttarakhand (*Uttarakhand Freedom of Religion Act, 2018*)

Copy of the aforesaid Acts are being filed herewith collectively and marked as ANNEXURE-CA "1" to the present counter affidavit.

16. That besides the above the Assembly of Rajasthan has also promulgated the Act known as Rajasthan Freedom of Religion Act, 2006.



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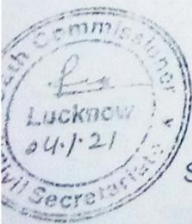
Copy of the aforesaid Act is being filed herewith and marked as ANNEXURE-CA"2" to the present counter affidavit. However, it has not come into force as on date.

17. That a Constitution Bench of the Hon'ble Supreme Court while interpreting Article 25 of the Constitution of India has held that right to practice, profess or propagate religion does not include a right to covert and has upheld the validity of the aforesaid Madhya Pradesh and Odisha legislations. The aforesaid decision was rendered by the Hon'ble Supreme Court in the matter of Rev. Stanislaus Vs. State of Madhya Pradesh reported in AIR 1977 SC-908. The aforesaid law still holds good and has been followed in very recent decision of the Hon'ble Supreme Court. Those decisions will be duly cited at the time of hearing of the present public interest litigation before this Hon'ble Court.

18. That the Rules framed under the Odisha legislation again fell for consideration before the Hon'ble Supreme Court and were again upheld by the Hon'ble Supreme Court in the year 2003. The said decision will also be cited before this Hon'ble Court at the time of hearing of the instant public interest litigation.

19. That as per Article 51 of the Constitution of India it is the duty of the State to foster respect for International Law Treaties obligations in the dealings of the organized people of one and another. In 1966, the United Nations adopted the International Covenant on Civil and Political rights. Article 18(2) reads as follows:-

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"18(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion on behalf of his choice."

20. That in 1981 the declaration of the General Assembly of the United Nations resolved and Article 1(2) of the said declaration reads as follows:-

"1(2) No one shall be subject to coercion which would impair his freedom to have a religion on behalf of his choice."

21. That the issue of forced conversion is being faced throughout the Indian subcontinent and it is not peculiar to our country. As such neighboring countries have also framed anti-conversion laws. There are anti-conversion laws in Nepal; in Myanmar; in Bhutan; in Sri Lanka and in Pakistan

22. That the working committee reports of the United Nations Human Rights Council have taken note of forced conversions and how the violation of freedom of conscience by non-state actors was being perpetrated but on account of non sufficient State machineries human rights were violated. It has been recommended in such reports that it is the positive obligation of the State to protect the rights of such class of individuals that were being encroached by non-State actors. A continuous reporting on matters relating to religion has been done by the Human Rights Council of the United Nations. As such, the Special Rapporteur on Freedom of Religion has been publishing reports on existing and emerging obstacles to the enjoyment of the Rights to Freedom of Religion and Belief.



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The same will be duly placed at the time of hearing of the instant public interest petition.

23. That in order to illustrate as to what is not a forceful conversion, and what is a forceful conversion the answering respondent is demonstrating the same by giving certain situations:

**(a) A case where there is no forceful conversion.**

A Hindu boy or a Muslim Boy or Sikh Boy attends a convent school, recite the morning prayer in the school, reads certain scriptures from the Holy Bible and complete his education. The objective is to take education in the convent school run by the minority Christian establishment. Students of non-Christian religion believe in their own faith and there is no loss of equality of status or loss of dignity and at the same time they a choice to study in a particular institution. The student does not covert and there is no conversion as he has not started believing in Christian faith.

**(b) A Christian family resides as a tenant along with non-Christian family.**

The terms and conditions of tenancy requires certain restrictions like non-drinking of wine even on festive occasions, non-eating of non-vegetarian food and certain other restrictions that forms part of religious practice of the Christian family. At the same time Christian family has also to follow certain rituals performed by the non-Christian family relating to timing etc. However, there is no restriction or force exerted not to attend Church or any force exerted outside the tenanted premises. This will not amount to a forceful conversion.



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24. Example of forceful conversion:

(a) Mr. 'X' is a member of Scheduled Caste. A group of missionaries visit the colony (Basti) where he resides with other Scheduled Caste persons. These missionaries allure every member in the colony (Basti) that we have a training school for Nursing and in case if you start believing in GOD and start reading Bible we will provide you Nurses Training Course free of cost and thereafter in the Hospital which is run by a particular community you will be given job of a Nurse and ultimately you will be in service of GOD. Thereby you will be providing service to the community at large provided you believe in GOD and leave your faith as this faith only treats you as Scheduled Caste and looks down upon you. Being allured by such assurances and to be given a decent job the entire Scheduled Caste community of the colony (Basti) decides to convert themselves to that particular community and leave their faith. This amounts to forceful conversion. Here there is no freedom of choice but the choice has been obtained by certain allurement and the community where (after conversion) they are being received still looks down upon them as a convert and there is no equality of status let alone freedom of conscience.

(b) A adult Hindu women makes her choice to marry a Muslim boy. The personal law does not give the Hindu women a full status of a wife as she is deprived of inheritance. It is only when Hindu women gives up her faith and stops worshiping idol and accepts Islam as her religion post consummation of marriage she will be considered to have entered into a valid marriage. The aforesaid aspect has been considered in detail by a

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recent decision of the Hon'ble Supreme Court. Therefore, even though Hindu women wishes not to give up her faith but she will have to give up her faith in order to enter into a valid marriage and accept Islam as her faith. This will amount to forceful conversion. The position remains the same if a Hindu boy wants to marry a Muslim girl. Hindu boy will have to accept Islam. Here again there is exercise of freedom of choice but there is loss of dignity and the conversion is not exercised as a choice but on account of compulsion due to personal law intervening.

**D. Need to frame the ordinance.**

25. That for framing of the law under Article 213 of the Constitution of India the law has been well settled. The Hon'ble Governor satisfies herself on the basis of the material placed and the satisfaction of the Hon'ble Governor means the satisfaction of the Council of Ministers besides her own independent satisfaction. Moreover, it has been held by the seven (7) Judges Constitution Bench of the Hon'ble Supreme Court that the satisfaction of the Governor has to be judged in the constitutional sense, which is to be recorded as a satisfaction under the constitutional sense. This necessarily implies that the satisfaction of the Hon'ble Governor is the subjective satisfaction of the Governor which is not justiciable.

So far as present ordinance is concerned, as has been narrated herein above it is an aid of the constitutional scheme inasmuch as it provides for certain constitutional safeguards and the aim and objective of the ordinance is to prohibit forcible conversions and which makes any form

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of forcible conversions unlawful. Thus the present ordinance is stemming from the constitutional scheme and as such cannot be questioned as held by the Hon'ble Supreme Court

26. That there are other sets of decisions by the Hon'ble Supreme Court where the Supreme Court has held that the ordinance cannot be questioned where fundamental rights are not infringed unreasonably. In the present matter there is no concrete material placed on record by the petitioner that may establish or demonstrate that any fundamental stands infringed unreasonably due to operation of the impugned ordinance. Thus the ordinance itself cannot be questioned nor the ordinance making power of the Governor under Article 213 can be put to question in the given set of circumstances.

**E. Decision in Salamat Ansari and 3 others Vs. State of U.P. and 3 others Criminal Misc. Writ Petition no. 1136 fo 2020 decided on 11.11.2020 requires reconsideration.**

The aforesaid Division Bench decision of this Hon'ble Court needs reconsideration as it has not dealt with the question relating to inter-fundamental right and intra-fundamental rights as it has also skipped the attention of the Hon'ble Division Bench as to what will be the scope of liberty of an individual qua the societal interest. Hence, the aforesaid judgment of the Hon'ble Division Bench cannot be considered to be good law at least on the following counts:

- (i) *Non-consideration of International Covenant on Civil and Political Rights.*

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- (ii) *Non-consideration of conflict of inter-fundamental rights and intra-fundamental rights.*
- (iii) *Inter play of Article 21 with Article 25 of the Constitution of India and as to whether Article 21 in matters of religion is subject to Article 25.*
- (iv) *Non-consideration of principles of constitutional morality.*
- (v) *Non-consideration of the decisions rendered by the Constitution Benches of the Hon'ble Apex Court.*
- (vi) *An incomplete analysis of the case of K.S. Puttaswamy Vs. Union of India reported in 2017 (10) SCC-1.*
- (vii) *Impact of personal laws of parties.*
- (viii) *Non-consideration of decisions of coordinate benches of this Hon'ble Court.*
- (ix) *Impact on public order.*

27. That without prejudice to the assertions made hereinabove that are without prejudice to one another the answering respondents proceed to give parawise reply to the various assertions made in the public interest litigation.

28. That the contents of paragraph 1 of the writ petition do not need any specific reply from the answering respondent.

29. That the contents of paragraph 2 of the writ petition are not admitted and are denied. The petitioner has not been able to establish his credentials and it is not known as to whether the petitioner has filed the petition with any ill-will or for an oblique motive or to harm the institution. The petitioner is put to strict proof of the averments so made in the paragraph under reply.



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30. That the contents of paragraph 3 of the writ petition do not need any specific reply from the answering respondents.
31. That the contents of paragraph 4, 5 and 6 of the writ petition are not admitted and are denied. As already stated the present public interest litigation cannot be filed only for the purpose of challenging the vires of legislation. The petitioner is put to strict proof of the assertions that he has no personal or private interest in the matter. The petitioner is self contradicting himself as he is claiming himself to be an office bearer of one organization Lok Morcha and it appears that the petition is in the name of Lok Morcha but without impleading the Lok Morcha the petitioner is espousing its cause in his personal name.
32. That the contents of paragraph 7 of the writ petition are not within the knowledge of the answering respondents and are denied. The petitioner has not given the particulars of the expenses incurred in the filing of the instant petition and from what source he has collected the funds for filing the instant writ petition so as to give credence to the assertions made in the paragraph under reply that the expenses have been collected by the supporters and likeminded persons engaged with such type of humanitarian cause.
33. That the contents of paragraph 8 of the writ petition are not admitted and are vehemently denied.

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34. That the contents of paragraph 9 of the writ petition are not admitted and are vehemently denied. The present petition is not maintainable and has been filed in clear violation of Chapter XXII Rule 1(3A) of the Rules of the Court as well as is in the teeth of the law laid down by the Hon'ble Supreme Court in the matter of State of Uttaranchal Vs. Balwant Singh Chauhan.

35. That the contents of paragraph 10 and 11 of the writ petition are contradictory in nature. In Paragraph 10 the petitioner describes himself to be coordinator of Lok Morcha whereas in Paragraph 11 the petitioner claims himself to be the convener of Lok Morcha. The petitioner has not given any details of Lok Morcha and has not even mentioned as to the place where Lok Morcha is registered and who are the office bearers of Lok Morcha; what are the objectives of Lok Morcha and has also not submitted list of the Members of Lok Morcha. The petitioner has only mentioned name of two persons but at the same time has not placed on record anything to show their association with Lok Morcha. It appears that the present petition is a proxy petition by Lok Morcha in the personal name of the petitioner and as such is liable to be rejected on this ground alone. The petitioner has no locus to maintain the instant public interest litigation.

36. That the contents of paragraph 12 of the writ petition are not admitted in the manner stated and are denied. The petitioner has not disclosed his occupation and his source of earnings. The affidavit does not disclose his occupation and alleged filing of the public interest litigation clearly show that he is a habitual litigant which makes the filing of the



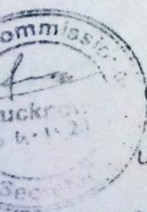
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present public interest litigation by the petitioner questionable. The Courts have come forward to discourage such kind of serial public interest litigation filing by persons who have no occupation and waste the time of the Hon'ble Court and have deprecated such practice.

37. That the contents of paragraph 13 of the writ petition are misconceived, not admitted and are denied. The petitioner has no competency to challenge the U.P. Prohibition of Unlawful Conversion of Religion Ordinance, 2020 by means of a public interest litigation as held by the Hon'ble Supreme Court under Article 226 of the Constitution of India. The present public interest litigation being under Article 226 of the Constitution of India and the sole relief sought for being a challenge to the aforesaid ordinance the petition itself would not be maintainable and as such is liable to be dismissed.

38. That the contents of paragraph 14 of the writ petition in so far as it relates to matters of record are not disputed.

39. That the contents of paragraph 15 and 16 of the writ petition are misconceived, misleading, incorrect and are denied. There is no ordinance which has been re-promulgated by the State of U.P. The State whenever has been called upon and looking to the exigency and requirement has framed the ordinance in view of the urgency upon which the Hon'ble Governor having applied independent mind has exercised the powers under Article 213 of the Constitution of India. There has been no encroachment of the principle of separation of powers and the ordinance



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making power has not been misused in the State of U.P. nor there is a general phenomenon to exercise the power under Article 213 of the Constitution of India. The aforesaid assertions have been made on the basis of personal knowledge without giving details as to which of the ordinance have been re-promulgated by the State of U.P. The assertions have been made vexatiously in order to prejudice the mind of the Hon'ble Court.

40. That the contents of paragraph 17 of the writ petition are misconceived, misleading, incorrect and are denied. The use of powers under Article 213 of the Constitution of India has been succinctly explained in the pre-parwise reply of the present counter affidavit and is not being repeated for the sake of brevity. The said assertions are reiterated and be considered as reply to the assertions made in the paragraph under reply. The reliance upon the decision of R.C. Cooper and D.C Wadhwa (Supra) as relied upon by the petitioner will be duly explained as it is more a matter of argument rather than of fact in view of the subsequent constitutional pronouncement of the Hon'ble Supreme Court.

41. That the contents of paragraph 18 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. It is totally incorrect to state that prior to promulgation of the ordinance no exercise was done and no data/survey or study was conducted that may reflect emergence of an urgent situation. Here it may be pertinent to submit that before the promulgation of the ordinance a detailed report was received from the U.P. State Law Commission which was its 8<sup>th</sup> report relating to



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conversion of religion which was an in-depth study of the subject and the ill consequences of the conversion of religion and as to what was happening in the State of U.P. The 8<sup>th</sup> State Law Commission report strongly recommended for bringing a law in the State of U.P. to deal with the cases of forceful conversion and also to prescribe punishment as it has the consequences of disturbing the balance in the society and the common brotherhood. These recommendations of the State Law Commission were received by the State Government on 25.11.2019. Upon receipt of the recommendations of the State Law Commission a Bill was proposed in the name of U.P. Freedom of Religion Bill-2019. The Bill was thereafter sent to Additional Director General (Prosecution) on 17.02.2020 where after certain changes were recommended in coordination with different departments namely the Legislative Department, Law Department, Home Department, Language Department and the Prosecution Department of the State Government. Necessary amendments in the Bill were being carried out to bring out a concrete law on the subject. However, while all this legislative exercise was going on cases relating to disturbance of public order on account of forceful conversion started rising in the State. Various First Information Reports came to be registered prior to coming into the force of the impugned ordinance and some of the heinous crimes that were committed across the State are being placed herewith and marked as **ANNEXURE-CA"3"** to the present counter affidavit. Not only the above data and material showed increase of forcible conversion relating to heinous crime but also the public outcry and the fear psychosis sinked in which is reflected from the correspondences of the public representatives and different organizations received by the State Government. These



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matters were also reported in various newspapers. Copy of certain newspaper clipping before coming into force of the ordinance is being filed herewith collectively and marked as ANNEXURE-CA"4" to the present counter affidavit. Since the Assembly was not in session and the matter related to life, liberty, dignity and the community interest as well as societal interest it became necessary to bring an ordinance and as such after detailed survey, study and on account of the material collected the ordinance came to be promulgated to protect the interest of the citizens so that there may not be any forceful conversion.

42. That the contents of paragraph 19 of the writ petition are misconceived, not admitted and are denied. Part III of the Constitution of India does not permit anything to be done forcefully. It only acknowledges natural rights to be fundamental rights. The State has made a law that prohibits taking away or abridging the right of other persons and therefore Article 13 (2) of the Constitution of India does not stand contravened but the present law is in consonance with the provisions of Article 13(2) of the Constitution of India.

43. That the contents of paragraph 20 of the writ petition are misconceived, not admitted and are vehemently denied. A perusal of the entire ordinance discloses that nowhere the term "Love Jihad" has been employed. The ordinance is equally applicable to all forms of forceful conversion and is not only confined to inter faith marriages. Hence it cannot be said that the ordinance is promulgated in the name of "Love Jihad". The stunted thinking of the petitioner may be personal to him and it



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has been held by the Hon'ble Supreme Court that thinking of an individual cannot be considered to be interest and hence on such thought of the petitioner it cannot be argued that there is curtailment of any fundamental right of any citizen of India provided in Part III of the Constitution of India.

44. That the contents of paragraph 21 of the writ petition are misconceived, incorrect and are denied. The petitioner has utterly failed to explain as to how the ordinance is contrary to individual rights of the citizen and how it is against the communal harmony. The ordinance does not inverse any equation. The ordinance does not restrain any conversion. It only prohibits forceful conversion which is antithesis of the entire constitutional frame work and the constitutional freedoms as guaranteed. The burden of proof of the State is discharged when it permits the person to enjoy the freedom but it is solemn duty of the State to ensure that the freedom is enjoyed and is not curtailed or taken away at the whims of another individual by exercising any form of force that stands duly defined under the ordinance.

45. That the contents of paragraph 22 of the writ petition are misconceived, misleading, incorrect and are denied. It is wholly misconceived to state that the ordinance treats every religious conversion as unlawful unless certified by the State Government. It is merely regulatory procedure and machinery frame work has been provided which frame work have already been upheld by the Hon'ble Supreme Court. So far as religious conversion done for the sake of marriage is concerned, it is misconceived to state that it criminalizes the same. Section 6 of the



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ordinance provides that if any marriage was done for sole purpose of unlawful conversion that shall be declared void by Family Court and where Family Court is not established, the Court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage. The proviso says that provisions of Section 8 and 9 shall apply in such marriages to be solemnized. Under the circumstances where the machinery provision has been applied and independent exercise or choice for conversion is made there is no criminalization. Even otherwise the marriage is declared void whereas all unlawful conversions are criminalized.

46. That the contents of paragraph 23 of the writ petition are misconceived, misleading, incorrect and are denied. Section 3, 5 and 6 of the ordinance are regulatory in character. They do not describe any State policing power over a citizen choice of life partner. There is no issue of privacy or individual autonomy getting encroached under Article 21 of the Constitution of India. The inter-fundamental rights of human dignity and personal liberty is being addressed by means of the present ordinance by introduction of the legislative frame work through Sections 3, 5 and 6.

47. That the contents of paragraph 24 and 25 of the writ petition are not admitted in the manner stated and are denied. In the before para-wise reply to the present counter affidavit the answering respondent has already made a humble submission before this Hon'ble Court that the judgment of this Hon'ble Court in the matter of Salamat Ansari needs reconsideration and issue on which it requires reconsideration have also been pointed out



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in the aforesaid paragraph. In this regard it will be relevant to submit that a Division Bench of the Hon'ble Rajasthan High Court has dealt with identical issue and has held that so long as the Rajasthan Freedom of Religion Act, 2006 does not come into force, guidelines are being issued which shall remain in force so that in the State of Rajasthan there is no forcible conversion of religion. A copy of the Division Bench judgment of the Hon'ble Rajasthan High Court delivered in Habeas Corpus Petition No. 149 of 2017 dated 15.12.2017 Chirag Singhvi Vs. State of Rajasthan is being filed herewith and marked as ANNEXURE-CA"5" to the present counter affidavit. The aforesaid judgment even though has been challenged before the Hon'ble Supreme Court by means of SLP (Criminal) No. 4097-4098 / 2019 Mr. 'X' Vs. State of Rajasthan and 2 others, however, no interim order has been granted. As such the guidelines issued by the Division Bench of the Hon'ble Rajasthan High Court remain in force. The guidelines so issued by the Rajasthan High Court are being quoted herein below for ready reference.

- (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-Divisiona' Area before conversion of religion.



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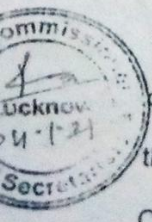
- (E) The District Collector/SDM/SDO shall put such information upon the Notice Board of its office on the same day.
- (F) The person, who has converted his religion from one religion to another religion, shall solemnize the marriage/Nikah after one week of such conversion of religion. For that, the 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.

46. That the contents of paragraph 26 of the writ petition are misconceived, misleading, incorrect and vehemently denied. With all due respect to the petitioner, the petitioner has not clearly understood the meaning of the term personal liberty as discussed by the Hon'ble Supreme Court in its decision in the case of Puttaswamy . Navtej Johar (decriminalization of Section 377 IPC), Joseph Shine (Decriminalization of Adultery), Shafin Jahan (Hadiya) and Shakti Vahini (Khap Panchyat) are the cases on separate issues which have not dealt with forceful conversions. The underlying factor is that no fundamental right is absolute.

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Article 21 is subject to other Articles of Constitution of India. The reliance in Shafin Jahan case is misconceived as right to change faith is not an issue in hand but the issue in hand is to forcibly create a terror and get a person converted. Fear psychosis or fraud were not issues that fell for consideration in Shafin Jahan's case. How the petitioner is applying the ratio of Shafin Jahan case to the ordinance in question is beyond comprehension.

49. That the contents of paragraph 27 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. As already detailed in the before parawise reply, it is not the thinking of the community that is necessary. Once the two adult individuals agree to enter into wedlock but if there is a fear psychosis in the community then it is the community interest as compared to community thinking. This community interest is on a much higher pedestal than agreement of two adults individual to enter into wedlock. This community interest is synonymous to social interest which is equivalent to public interest. Under the circumstances thinking of family or community is not the foundation but interest of the community and interest to keep the family safe and as a consequence the entire social fabric in balanced position is the objective for which the consent of two adults individuals has to be regulated. In this regard there being no existing law in the State of U.P, the present legislation seeks to cure the mischief. It is evident that besides the State of U.P. there are eight (8) other State where identical law is in place. Thus the principles laid down in Shakti Vahini case of the Hon'ble Supreme Court is not applicable.



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50. That the contents of paragraph 28 of the writ petition are misconceived, not admitted and are vehemently denied. Puttaswamy judgment will be duly placed and argued at the time of hearing of the present public interest litigation.

51. That the contents of paragraph 29 and 30 of the writ petition in so far as it mentions the regulatory frame work are not disputed. However, it is misconceived to state that the impugned ordinance leads to an unreasonable inclusion into the domain of personal autonomy. There is no unreasonable inclusion into the domain of personal autonomy. Judicial notice can be taken of the fact that a jurisdiction has been created by Hon'ble the Chief Justice where petitions asking for police protection are filed on a daily basis and the Hon'ble Judges of this Hon'ble Court devote full time in making the enquiries as to whether there has been a lawful marriage or not. These are the things which have to be done and left in the hands of executive rather than in the hands of the Hon'ble Courts as has already been decided by the United States Supreme Court. The relevant judgment of the United States Supreme Court will be duly cited at the time of hearing of the present public interest litigation. It is unfathomable as to how the provision of the ordinance energize the community groups and reinforce the social asymmetries to further dis-empower an individual.

52. That the contents of paragraph 31 of the writ petition are misconceived, not admitted and are vehemently denied. It is vehemently denied as to how sexuality of the women is being controlled by the



impugned ordinance. There is no provision that may even hint to control the sexuality of women and treat the human body as a subject of subjugation or to create gender bias. There are no fetters placed upon the exercise of free will of the women in the matter of selection of his or her life partners but the same is only subjected to certain machinery provision that are of regulatory character. These regulatory mechanism only ensure the dignity of the women and protect the interest of the women while she exercise her right of personal liberty.

53. That the contents of paragraph 32 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. The punishment prescribed under the ordinance cannot be said to be against the jurisprudence of penology and it does not hit any provision of the Constitution of India. In United States of America penalty is death sentence and even for polygamy the penalty is death sentence. Likewise in other countries of the world there are much higher punishment prescribed. So in matters of punishment it cannot be said that jurisprudential issue stands violated.

54. That the contents of paragraph 33 of the writ petition are misconceived, misleading, incorrect and are denied. Section 12 of the ordinance rightly impose the burden of proof upon the accused. The reverse onus is necessary in the given circumstances on account of the fact that the accused himself has special knowledge and in recent criminal jurisprudence reverse onus is being widely acknowledged and is now an accepted norm. It is, therefore, misconceived to state that reverse onus is

against the doctrine of criminal judicial system as well as Indian Evidence Act. There are number of legislations in India where reverse onus clause exist and are in operation. Reverse onus clause is especially made applicable to laws dealing with issues relating to social evils.

55. That the contents of paragraph 34 of the writ petition are not admitted in the manner stated and are denied. However, it is stated that freedom is not curtailed by means of the impugned legislation nor the individuality is being curtailed.

56. That the contents of paragraph 35 of the writ petition are misconceived, misleading, incorrect and are denied. It is totally incorrect to state that the impugned ordinance creates difference in our composite culture. The detailed assertions in this regard and the entire laudable purpose for bringing the legislation has also been explained in the before parawise reply of the present counter affidavit. There is no discrimination generated on account of operation of the impugned ordinance. In fact people have reposed faith and are feeling safe after coming into force of the present legislation. The Nazm of the learned poet cannot be the formation or a legal basis to dislodge a legislation as it is the Constitution of India which is supreme and Sahir Ludhianivi unfortunately could not make himself available to Constituent Assembly. His contribution therefore were missed by the Members of the Constituent Assembly. However, since the petitioner wishes to rely upon Shahir Ludhianivi the answering respondent would then rely upon anti-conversion laws that were in existence prior to coming into force of the Constitution but being a State it



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will not be in the fitness of things to place them but for reference it is mentioned that there were at least four different legislations in the present State of Rajasthan.

57. That the contents of paragraph 36 of the writ petition are not admitted in the manner stated and are denied. In this regard it is stated that genuine cases that have come up have been registered and in certain cases charge sheet have also been filed. Copy of the list of certain cases that were registered after coming into force of the Act is being filed herewith and marked as ANNEXURE-CA"6" to the present counter affidavit.

58. That the contents of paragraph 37 of the writ petition are misconceived, misleading, incorrect and are denied. There is no hostile discrimination between two sects and religious groups. In fact it removes any kind of discrimination. There is no violation of Article 14 of the Constitution of India. The Act safeguards the equality of status and opportunity.

59. That the contents of paragraph 38 of the writ petition are repetition of the earlier submissions made by the petitioner in the nature of assertions made in the writ petition. The impugned ordinance does not deprive any person his right of choice to select her/his life partner and there is no violation of the right under Article 21 of the Constitution of India. Detailed reply in this regard has also been given and is not being repeated here again for the sake of brevity.



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60. That the contents of paragraph 39 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. The right to freely profess, practice and propagate religion does not include the right of forcible conversion and thus the right under Article 25 of the Constitution of India is not violated by the impugned ordinance but it seeks to safeguard the freedom of conscience and the right to belief and faith in one's religion.

61. That the contents of paragraph 40 of the writ petition are misconceived, misleading, incorrect and are denied. The impugned ordinance does not dilute the provisions of law enacted by the Parliament like Cr. P.C and I.P.C.

62. That the contents of paragraph 41 of the writ petition are misconceived, misleading, incorrect and are denied. It is misconceived to state that the impugned ordinance contravene the provisions of Special Marriage Act, 1954. The present enactment is covered under public order which is a State subject under List II Entry 1 of the 7<sup>th</sup> Schedule to the Constitution of India and as such does not overlap any provision of the Special Marriage Act, 1954. There is no repugnancy and as such Article 254 of the Constitution of India will not come into play.



63. That the contents of paragraph 42 of the writ petition are misconceived, misleading, incorrect and are denied. It is misconceived to state that impugned ordinance lacks reasonableness. No person has ever reported that he is deprived of the protection of his rights when the process

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of enquiry has been initiated against him. The aforesaid submission/assertion is merely based on an apprehension which is ill founded.

64. That the contents of paragraph 43 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. The impugned ordinance contains several checks and balances. There is no charge mentioned in the impugned ordinance for implicating in the name of "Love Jihad". The offence is committed if the procedure prescribed under the ordinance is not followed. If the procedure under the ordinance is followed then there is no occasion of any person being falsely implicated of the charges. Complete procedure has been devised. The State Government will be shortly making the rules in this regard.

65. That the contents of paragraph 44 of the writ petition are misconceived, misleading, incorrect and are vehemently denied. The burden of proof provides reasonable opportunity to prove the innocence and hence it is misconceived to state that the ordinance does not need minimum requirement necessary to prove the innocence.

66. That the contents of paragraph 45 and 46 of the writ petition are misconceived, misleading and are denied. There is no constitution of any Tribunal under the ordinance. The assertion in the paragraph under reply is totally irrelevant and is not applicable to the case in hand. There is no provision of appeal as there does not exist any Tribunal. The assertion seems to have been copied from some other writ petition.





67. That it is submitted that none of the grounds mentioned in the paragraph under reply are made out. The present writ petition (PIL) being a misconceived writ petition (PIL) is liable to be dismissed along with heavy costs.

That the contents of paragraph 1, 2, 3.....of the affidavit are true to my personal knowledge, those of paragraph no 10, 12, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 57, 59, 64.....are based on perusal of record, those of paragraph no 6, 15, 16, 18, 21, 22, 23, 24, 41, 51, 52, 53, 54, 55, 56, 63.....are based on information received and those of paragraphs no 4, 5, 7, 9, 11, 13, 17, 19, 20, 26, 31, 37, 38, 40, 42, 45 to 50, 55 to 58, 60 to 62, 65 to 67.....are based on legal advise, which I believe to be true.

That no part of it is false and nothing material has been concealed in it.

So help me GOD.



(DEPONENT)

हेमन्त कुमार सोनकर  
रमणीका झा  
गृह (उमिस) अनुभाग-9  
उप उच्च न्यायालय

I-IDENTIFY THE DEPONENT WHO HAS SIGNED BEFORE ME

कृपण सं०... 2, 18, 73, 23.....  
द्वारा सपथ की गई... श्री. Hemant Kumar Soukar, Special Secretary, Home Dept, U.P. Shashan  
जिसका परिचय श्री. Hemant Kumar Soukar, Review Officer, Home Police-9, U.P. Shashan  
दिनांक 24.1.21..... समय 7:00P.M.  
काद संख्या. Civil. No. W.P. (PIL) No-1756/2020  
पदाकार श्री. Ajit Singh Yadav  
न्यायालय Home High Court Allahabad  
रहो फीस वसूली गई

4-1-21  
(आर० सी० वर्षा)  
अनुभाग जधिकारी एवं सपथ आयुक्त  
न्याय अनुभाग-3 (लेखा)  
उत्तर प्रदेश शासन