



Analysis Of The Controversial Provisions Of Anti-conversion Ordinance In Recent Years

Suman^{1*}, Dr. M. Imran²

^{1*}Research Scholar, School of Law and Constitutional Studies, Shobhit Institute of Engineering and Technology Deemed to-be-University, Meerut.

²Professor, School of Law and Constitutional Studies, Shobhit Institute of Engineering and Technology Deemed to-be-University, Meerut.

***Corresponding Author:** - Suman

*Research Scholar, School of Law and Constitutional Studies, Shobhit Institute of Engineering and Technology Deemed to-be-University, Meerut.

Abstract

The fundamental rights to equality, life, and religion have all been deemed to be violated by the law that forbade the unlawful conversion of one faith into another. Individuals who witness or participate in a conversion claim that the Ordinance places undue pressure on both parties because it requires them to swear before the district magistrate that the conversion was the result of free will and that no dishonest marriages or other unethical methods, such as fraud or misrepresentation, coercion, undue influence, or allurement, occurred. It is necessary to make this declaration both before and after the conversion. Furthermore, it is the responsibility of the individual who started the conversion to demonstrate that the interreligious union was not influenced by marriage or any other dishonest methods, including deception, compulsion, undue influence, or allurement. Such a rule of procedure has the effect of discouraging individuals from getting married in another religion and acting as a disincentive to getting married in any religion at all when combined with fines based on such careless laws.

Keywords: Inter-religious marriages, Misrepresentation, Legislative power.

INTRODUCTION

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (which will be referred to as "the Ordinance" from this point forward) has been the topic of discourse for a considerable amount of time in recent years. There is a wide range of imaginative phrases that have been used to characterize it, ranging from "discriminatory towards Muslims" to "a law equivalent to Hitler's regime." Despite the fact that a number of these allegations appear to have some basis in the Ordinance, others appear to be founded on erroneous concerns.

On the other side, the Uttar Pradesh government has vehemently defended the Ordinance, arguing that there is no fundamental right to convert, as the *Rev. Stanislaus v. State of Madhya Pradesh*¹ ruling held. Moreover, for the purpose of maintaining public order, the Ordinance aims to regulate the illegal aspect of interfaith marriage rather than outright forbidding it. Moreover, it is contended that the only weddings that are criminalized are those that are used as a front to obtain a conversion goal or vice versa. Moreover, all groups shall be treated equally under the provisions of the Ordinance, which are neutral in terms of religion. There is also the argument that since there are already a number of anti-conversion legislation in existence, the UP government is not the first to take action against conversion. Therefore, the Ordinance only seeks to restrict religious freedom to the extent that it is possible in order to maintain public order.

HISTORY OF ANTI-CONVERSION LAWS

India has a diverse set of religious beliefs and rituals. The Indian subcontinent is the birthplace of four major global religions: Hinduism, Buddhism, Sikhism, and Jainism. India's population is made up of 79.80% Hindus, 14.23% Muslims, 2.30 percent Christians, 1.72 percent Sikhs, 0.70 percent Buddhists, and 0.37 percent Jains, according to 2011 census data. During the British Colonial period, Hindu princely kingdoms initially implemented laws forbidding religious conversions, particularly "around the later half of the 1930s and 1940s." The prohibitions were put in place "in an effort to protect Hindu religious identity in the face of British missionaries" in these areas. There were "almost a dozen princely states with such laws," including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi. Among the legislation enacted during that time period were the Raigarh State Conversion Act of 1936, the Surguja State Apostasy Act of 1942, and the Udaipur State Anti-Conversion Act of 1946.

Following India's independence, the Indian Parliament proposed various anti-conversion bills, but none were passed. The Indian Conversion (Regulation and Registration) Bill was presented in 1954 with the intention of requiring "missionary licensure and conversion registration with government officials." The lower chamber of Parliament rejected this measure

¹ 1977 SCR (2) 611

because it did not get a majority of votes. Backward Communities (Religious Protection) Bill was created in 1960, "with the goal of preventing Hindus from converting to 'non-Indian religions,' which, according to the Bill's definition, includes Islam, Christianity, Judaism, and Zoroastrianism." and the Freedom of Religion Act, which sought "governmental restrictions on inter-religious conversion" in 1979. These legislation were also not enacted by Parliament due to a lack of parliamentary support.

"High-ranking members of the ruling BJP party, including Amit Shah, the party's president, asked for a statewide anti-conversion law" earlier this year. According to two BJP MPs, including Amit Shah, anti-conversion legislation would be introduced in both houses of Parliament "so as to criminalize religious conversion without the government's authorization." However, the BJP government's plan to enact national legislation is said to have "hit a roadblock" with the Ministry of Law and Justice, which advised against it, claiming that it is "not tenable" because it is "purely a state subject"—that is, a matter that falls solely under the constitutional domain of the states under Schedule Seven of the Constitution.

PROVISIONS OF THE ORDINANCE

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 contains 14 clauses and three schedules. Its purpose is to make it unlawful to convert from one religion to another via deceit, coercion, undue influence, compulsion, allurement, or any other fraudulent means, or marriage, and to address the challenges that occur as a consequence. Section 3 exhibits this by prohibiting conversion, as well as marriage, via deceit, force, undue influence, compulsion, allurement, or any other fraudulent way. Reverting to one's old faith, on the other hand, is excluded from the requirement. Section 4 also outlines who is authorized to file a police report. It permits any aggrieved person, other than his brother/sister, parents, or anyone else connected to him by blood, marriage, or adoption, to file a FIR against a conversion that breaches the limits of Section 3. For breaking Section 3, a punishment of one to five years in jail and a fine of not less than fifteen thousand rupees is prescribed in Section 5. The section distinguishes between criminals who are juveniles, women, and members of restricted castes and tribes. Furthermore, mass conversions and subsequent convictions have been heavily punished. Marriages for the sole purpose of conversion or vice versa must be declared void on the petition of either party. According to Section 7, the crimes under the Ordinance are cognizable, non-bailable, and exclusively triable by the Court of Sessions. One of the most contentious sections of the legislation is Section 8, which requires a person who wishes to convert his or her religion to make a declaration to the District Magistrate or Additional District Magistrate at least sixty days in advance, stating that the decision to convert was made freely and without coercion, undue influence, or allurement.

REVIEW OF LITERATURE

Jafri² However, the law has a number of elements that might be considered illegal. This is a plausible interpretation of the ordinance. For example, the code makes it a criminal offense to convert a person by providing her a "allurement." This is one application of the statute. It is possible to provide a gift to the individual who is being sought to be converted, which is included in the definition of the phrase "allurement," which is quite broad. This indicates that if a person presents a copy of the Bhagavad Gita to a non-Hindu and the non-Hindu decides to convert to Hinduism after reading it, the conversion might be seen to have occurred through "allurement" because it took place after a gift was given to the person who converted to Hinduism. According to the ordinance, "allurement" might also involve informing the person who is being sought to be converted that she would have a "better lifestyle" if she converts, or that she will incur "divine displeasure or otherwise" if she does not convert.³

It is impossible to disagree with the basis of the law, which states that it is unethical to convert someone by deception or false representation. It is important to remember that no one should be coerced into converting to a different faith against their will. In point of fact, despite the fact that the members of the Constituent Assembly included the right to "propagate" one's faith in the chapter on basic rights, they thought it a "rather obvious doctrine" that this would not encompass conversions that were forced upon individuals. During one of the subcommittees of the assembly, Sardar Vallabhbai Patel had stated, "Forcible conversion is no conversion." He went on to say that "we won't recognize it." On the other hand, the UP ordinance goes well beyond this idea and accomplishes something that is rather peculiar.⁴

Rao⁵ stated that "reconversion" to a person's prior faith is not criminal, even if it is tainted by fraud, compulsion, allurement, deception, and other such things. To put it another way, if a person converts from Religion A to Religion B of her own free choice and is subsequently coerced into reverting back to Religion A against her will, this will not be considered "conversion" under the ordinance in any way, and it will fall fully beyond the authority of the law. By use of this odd provision, the legislation appears to send a clear message to the audience that it is intended for: Ignore the situation if a person who has converted to another religion is coerced into returning to ours, but make it unlawful for them to convert to other religions..

² [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021))

³ Bajpai, Namita (31 October 2020). "'Your Ram Naam Satya journey will begin': CM Yogi's warning on 'love jihad', conversations". *The New Indian Express*. Retrieved 2020-12-01.

⁴ [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021))

⁵ *ibid*

Jaffrelot⁶ On the subject of "love jihad," the BJP takes over the baton from vigilante organizations. The police and the legal system have been aiding in this move.

*Rev Stainislaus v State of Madhya Pradesh*⁷ The basic right to "propagate" religion does not include the freedom to convert a person to another faith, according to a decision made by a bench of five judges of the Supreme Court. Under the circumstances of that case, the court had upheld anti-conversion legislation that had been established by the states of Orissa and Madhya Pradesh. These statutes put restrictions on the freedom of conscience and the right to spread religion that were relatively comparable to one another, but significantly less harsh.⁸

DEFINITION OF THE WORD 'RELIGION'

The Ordinance's definition of religion has been challenged for including not only traditional religions but also other faiths, so expanding its scope. As a result, the definition of religion is said to be unclear and confusing. However, it is easy to overlook the importance of preventing conversion from the perspective of indigenous people. These tribal people have no religion or practise animism, and missionaries and other groups frequently target these naive tribal people in an attempt to convert them to their own faith. This is why the concept of religion has been expanded to cover not only traditional religion but also a variety of faiths.

Section 3

Furthermore, it is asserted that the usage of the word marriage without qualifier leaves the executive with a major scope of harm. It makes any marriage in which a person is forced to convert illegal and punitive. However, if we read the text as a whole, it appears that the word marriage is not used without qualification. The word 'marriage' must be read in conjunction with the primary clause, which states, "No person shall convert or attempt to convert either directly or indirectly any other person from one religion to another by use or practice of," making the entire sentence read, "No person shall convert or attempt to convert any other person by use or practice of marriage." Any conversion for the sole purpose of marriage is already recognised to be unlawful and prohibited. As a result, the clause does no harm but penalises marriage only for the purpose of conversion. Furthermore, because every other term in the section has a negative connotation, such as misrepresentation, force, undue influence, coercion, allurement, or fraudulent means, it is safe to assume that marriage will as well. The ejusdem generis rule also states the same thing. Reconversion to a previously practiced faith is not considered conversion under Section 3 of the Ordinance.

Section 5

Section 5 specifies the penalties for violating section 3. In cases of violations against minors, women, or anyone from a scheduled caste or community, the punishment is harsh. It has been claimed that the section looks to contravene article 14, the Right to Equality, by establishing such a provision. Everyone must be treated equally under the law. However, when making this argument, one tends to overlook Articles 15(3) and 15(4) of the Indian Constitution, which allow the government to establish specific provisions for women, children, and scheduled caste and scheduled tribes. Furthermore, it is not uncommon for fringe members from other religions to target scheduled caste and scheduled tribe individuals because of their socioeconomic status in society. A comparable provision can also be found in other states' anti-conversion legislation. As a result, offending against certain groups of people has a harsh penalty.

Section 6

Courts will deem a marriage solely for the purpose of conversion or vice versa void under Section 6. The provision merely restates the Supreme Court's decisions in the cases of *Sarla Mudgal v. Union of India*⁹ and *Lily Thomas v. Union of India*¹⁰. The catch is that the marriage can only be cancelled through a petition filed by the parties, not by relatives.

Section 7

The offences under the Ordinance are cognizable and non-bailable under Section 7. This is the first time such a provision has been included in legislation. When this clause is combined with the fact that any aggrieved person, brother/sister, parents, or anybody related by blood, marriage, or adoption can register a FIR, the converted individuals are left with a lot of room for harassment and victimisation. Furthermore, the Draft law makes no mention of making some offences non-cognizable and non-bailable. The draught bill is silent on whether or not certain offences are bailable or non-bailable, and whether or not they are cognizable or non-cognizable.

CONCLUSION

The UP Ordinance, 2020 has sparked a lot of debate. Some are well-placed, while others are misplaced. There is little doubt that the Ordinance imposes a number of restrictions on persons who convert to another faith, but whether this

⁶ [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021)

⁷ (1977)

⁸ Raju, S (13 December 2020). "Woman detained under UP's new law against love jihad suffers miscarriage". Hindustan Times. Retrieved December 16, 2020.

⁹ AIR 1995 SC 1531.

¹⁰ 2000 (2) ALD Cri 686.

amounts to regulation or an unwarranted intrusion into people's lives is a topic that will be decided by the courts. Furthermore, the provisions of the Ordinance must be viewed in light of the triple test established in the *Puttaswamy case*, which states that any regulation affecting the Right to Privacy must satisfy three criteria: it must be legitimate, necessary, and proportional. Also, the impact of the Ordinance on the freedom of religion guaranteed by Articles 25 to 28 of the Constitution must be assessed to see if it violates or merely regulates that freedom. Furthermore, the Ordinance appears to be at odds with several Supreme Court decisions that state that the ability to choose one's spouse is a basic right protected by Article 21 of the Constitution. Despite the fact that the Ordinance outlaws and punishes conversion and marriage without free agreement, article 21 is attracted by the procedural necessity to notify the administration. The statute, on the other hand, does not apply to couples married under the Special Marriage Act of 1954, which has its own verification system. People of various faiths who desire to marry can do so under the Special Marriage Act of 1954, which does not require a district magistrate to conduct a pre-marriage investigation. If the couple marries under the Special Marriage Act, 1954, they only need to notify the marriage officer, who will have it publicised in a prominent location in his office, and if no objections are received, the marriage will be solemnised after thirty days. However, a recent judgement by the High Court of Allahabad has made the necessary public notice of marriage under the Special Marriage Act, 1954 as a directory, meaning that only the Marriage Officer can make a public notice of marriage if the couple wishes to do so. The ruling is almost certain to be appealed, and the Supreme Court's decision is awaited.

The UP government, on the other hand, has relied on the Supreme Court's decision in *Rev Stanislaus v. State of MP Case*, which held that there is no fundamental right to convert and that the fundamental right to profess, practise, and propagate a religion can be reasonably restricted on the basis of public order, morality, health, and other provisions of Part III. Illegal conversion can also cause law and order issues, according to the ruling. The Ordinance is the result of the same justifiable restriction based on public safety. Moreover, the Ordinance is not the first statute to control conversion; numerous governments have already done so. In a recent interview, the current Chief Minister of Uttar Pradesh stated that the law does not specify whether it applies only to Hindus or Muslims. He emphasised that if a Hindu guy marries a Muslim lady, the law will be the same. He also added that the law was enacted to guarantee security to women across the state, and that no one will be able to abuse the law. The Uttar Pradesh government appears to be confident in the Ordinance and is considering enacting legislation to manage religious places in the state. The State Law Commission has already begun its investigation.

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