



## ANALYSIS OF THE CONTROVERSIAL PROVISIONS OF THE ORDINANCE IN RECENT YEARS

---

DR. AMIT KUMAR, Assistant Professor, S D College of Law, Muzaffarnagar ,  
Mobile No. 9410898122, Email- [amitchauhan920@gmail.com](mailto:amitchauhan920@gmail.com)

DR. PRITI LOUR, Assistant Professor, S D College of Law, Muzaffarnagar  
Mobile No. 9410891945, Email- [pritchauhan920@gmail.com](mailto:pritchauhan920@gmail.com)

---

### Abstract

*The law aimed at prohibiting illicit conversion from one religion to another has been considered to be in violation of the fundamental rights of equality, life, and religion. It is also stated that the provisions of the Ordinance attempt to impose an unnecessary burden on the party as well as the person conducting the conversion by requiring them to make a declaration before the district magistrate that the conversion was carried out with free consent and without any misrepresentation, force, undue influence, coercion, allurement, or by any fraudulent means or marriage. This statement must be made not only before but also after the conversion. Furthermore, the individual who produced the conversion bears the burden of evidence in proving that the inter-religious marriage was not influenced by misrepresentation, force, undue influence, coercion, allurement, or any other fraudulent methods or by marriage. The impact of such a rigmarole of procedure, coupled with penalties based on such sloppy regulations, is to dissuade people from entering into inter-religious weddings and to create a deterrent against getting involved in any inter-religious marriages.*

**Key Words:** Inter-religious marriages, Misrepresentation, Legislative power.

### 1.1 INTRODUCTION

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (hereafter referred to as "the Ordinance") has been the subject of much discussion in recent years. Every creative phrase in the lexicon has been used to describe it, from 'discriminatory towards Muslims' to 'a law equivalent to Hitler's regime'. While several of these accusations appear to have some validity in the Ordinance, others appear to be based on erroneous fears.

The Uttar Pradesh administration, on the other hand, has vigorously supported the Ordinance, claiming that, as the *Rev Stanislaus v. State of Madhya Pradesh* decision held, there is no basic right to convert. Furthermore, the Ordinance does not prohibit interfaith marriage; rather, it attempts to control the unlawful component of it in the sake of public order. Furthermore, it is argued that only marriages that are exploited as a ruse to achieve a conversion purpose or vice versa are punishable. Furthermore, the Ordinance's provisions are religiously neutral and will apply equally to all communities. The argument is also made that the UP government is not the first to act against conversion because there are currently various anti-conversion laws in place. As a result, the Ordinance just strives to control religious freedom to the extent that it can on the basis of public order.

### 1.2 HISTORY OF ANTI-CONVERSION LAWS

India is a country with a wide range of religious beliefs and customs. The cradle of four main world religions—Hinduism, Buddhism, Sikhism, and Jainism—is the Indian subcontinent. According to 2011 census figures, 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.

Hindu princely states first enacted laws prohibiting religious conversions during the British Colonial period, primarily "around the later half of the 1930s and 1940s." The regulations were enacted "in an effort to protect Hindu religious identity in the face of British missionaries" in these states. There were "almost a dozen princely states with such laws," including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi. The Raigarh State Conversion Act, 1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946 are just a few of the laws from that time period.

Following India's independence, the Indian Parliament introduced several anti-conversion measures, but none of them were passed. In 1954, the Indian Conversion (Regulation and Registration) Bill was introduced, with the goal of enforcing "missionary licensure and conversion registration with government officials." This bill was rejected by the lower house of Parliament because it did not receive a majority of votes. In 1960, the Backward Communities (Religious Protection) Bill was introduced, "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 Bill, which sought "governmental restrictions on inter-religious conversion" in 1979. Due to a lack of parliamentary support, these bills were also not passed by Parliament.

"High-ranking members of the ruling BJP party, including Amit Shah, the party's president, asked for a statewide anti-conversion law" in 2015. Anti-conversion measures would be submitted in both chambers of Parliament "so as to criminalise religious conversion without the government's authorization," according to two BJP MPs, including Amit Shah. The BJP government's plan to enact national legislation, however, 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.

### **1.3 PROVISIONS OF THE ORDINANCE**

There are 14 provisions and three schedules in the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020. Its goal is to make it illegal to convert from one religion to another using deception, force, undue influence, compulsion, allurements, or any other fraudulent means, or through marriage, and to deal with the issues that arise as a result. Section 3 exemplifies this by forbidding conversion through deception, force, undue influence, coercion, allurements, or any other fraudulent methods, as well as marriage. However, reverting to one's previous religion is exempt from the provision. In addition, section 4 discusses who is qualified to file a police report. It allows any aggrieved person, other than his brother/sister, parents, or anybody related to him by blood, marriage, or adoption, to file a FIR against conversion that violates section 3's restrictions. Section 5 prescribes a sentence of one to five years in prison and a fine of not less than fifteen thousand rupees for violating section 3. The section differentiates between minors, women, and persons from scheduled castes and tribes who commit crimes. In addition, mass conversions and subsequent convictions have been penalised harshly. On the petition of either party, the courts must declare marriages for the sole purpose of conversion or vice versa void. The offences under the Ordinance are cognizable, non-bailable, and exclusively triable by the Court of Sessions, according to Section 7. Section 8 of the legislation is one of the

most contentious parts, requiring 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.

#### 1.4 REVIEW OF LITERATURE

**Jafri**<sup>1</sup> However, there are several provisions in the ordinance which could plausibly be identified as unconstitutional. For instance, the ordinance makes it a criminal offence to convert a person by offering her an “allurement”. The term “allurement” is defined very broadly, to include even providing a gift to the person who is sought to be converted. This means that if a person offers a copy of the Bhagavad Gita to a non-Hindu, and the non-Hindu decides to convert to Hinduism after reading it, the conversion could be said to have taken place by “allurement” since it occurred after a gift was given to the convert. Under the ordinance, “allurement” can also mean telling the person sought to be converted that she will have a “better lifestyle” if she converts, or that she will incur “divine displeasure or otherwise” if she does not<sup>2</sup>.

There can be no quarrel with the ordinance’s premise that converting somebody by fraud or misrepresentation is wrong. After all, no person should be forced to convert to another religion against her will. In fact, though the members of the Constituent Assembly included the right to “propagate” one’s religion in the chapter on fundamental rights, they considered it a “rather obvious doctrine” that this would not include forcible conversions. “Forcible conversion is no conversion”, Sardar Vallabhbai Patel had said in one of the sub-committees of the assembly, adding, “we won’t recognise it.” However, the UP ordinance goes beyond this principle and does something quite strange<sup>3</sup>.

Rao<sup>4</sup> says that “reconversion” to a person’s previous religion is not illegal, even if it is vitiated by fraud, force, allurement, misrepresentation and so on. In other words, if a person converts from Religion A to Religion B of her own volition, and is then forced to reconvert back to Religion A against her will, this will not constitute “conversion” under the ordinance at all, and falls completely outside the ambit of the law. Through this peculiar provision, the law seems to send an unmistakable signal to its target audience: Prohibit illegal conversion to other religions, but look the other way if a convert is forced to reconvert back to ours.

Jaffrelot<sup>5</sup> On ‘love jihad’, BJP picks up baton from vigilante groups. Police, judicial apparatus have aided this move.

Rev Stainislaus v State of Madhya Pradesh<sup>6</sup> a bench of five judges of the Supreme Court held that the fundamental right to “propagate” religion does not include the right to convert a person to another religion. In that case, the court had upheld anti-conversion statutes enacted by the states of Orissa and Madhya Pradesh,

---

<sup>1</sup> [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021))

<sup>2</sup> 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.

<sup>3</sup> [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021))

<sup>4</sup> *ibid*

<sup>5</sup> [www.google.com\(Internetsources-2021\)](http://www.google.com(Internetsources-2021))

<sup>6</sup> (1977)

which imposed somewhat similar (even if slightly less extreme) restraints on the freedom of conscience and the right to propagate religion<sup>7</sup>.

### 1.5 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 and

---

<sup>7</sup> Raju, S (13 December 2020). "Woman detained under UP's new law against love jihad suffers miscarriage". Hindustan Times. Retrieved December 16, 2020.

*Lily Thomas v. Union of India*. 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 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*<sup>8</sup>, 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<sup>9</sup>. 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<sup>10</sup>. In a recent interview<sup>11</sup>,

---

<sup>8</sup> Supra note 10.

<sup>9</sup> The Constitution of India, art.25.

<sup>10</sup> Supra note 11.

<sup>11</sup> India Tv News Desk, "UP Love-Jihad Law: It's not about Hindus or Muslims only, says CM Yogi Adityanath", India TV, Dec. 23, 2020, available at: <https://www.indiatvnews.com/news/india/up-love-jihad-law-unlawful-religion-conversion-bill-hindus-muslims-yogi-adityanath-exclusive-673505> (last visited on Dec. 30, 2020).



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<sup>12</sup>.

#### Bibliography

- P. Chidambaram, “A Fraud on the Constitution”, *The Indian Express*, Dec. 7 2020.
- N. C. Asthana, “Legal Howlers in UP’s ‘Anti-Conversion’ Law Expose its Real Intent”, *The Wire*, Dec. 3, 2020, available at: <https://thewire.in/communalism/legal-howlers-in-ups-anti-conversion-law-expose-its-real-intent> (last visited on Dec. 30, 2020).
- Ralph Alex Arakal, “Protests planned in Bengaluru as Karnataka mulls ‘love jihad’ law”, *The Indian Express*, Dec. 1, 2020.
- Brinda Karat, “Adityanath’s New Hitler-Like Rule On Inter-Faith Marriages”, *The Indian Express*, Nov. 25, 2020.
- Tejaswi Surya & Suyash Pande, “UP Ordinance On Religious Conversion Is Being Misconstrued: Here’s Why It Will Pass Judicial Scrutiny”, *Swarajya*, Dec. 21, 2020.
- Poojisri Ganesan, “UP not first to target ‘love jihad’, 2 states have law against forced conversions for marriage”, *The Print*, Nov. 26, 2020, available at: <https://theprint.in/judiciary/up-not-first-to-target-love-jihad-2-states-have-law-against-forced-conversions-for-marriage/552033/> (last visited on Dec. 30, 2020).
- Jennifer R. Coleman, Authoring (In) Authenticity, Regulating Religious Tolerance: The Legal and Political Implications of Anti-Conversion Legislation for Indian Secularism 23 (Paper Presented to Penn Program on Democracy, Citizenship, and Constitutionalism Graduate Workshop, Sept. 13, 2007–08).
- State Law Commission of Uttar Pradesh, “Eighth Report on Freedom of Religion” (November, 2019), available at: <http://upslc.upsdc.gov.in/MediaGallery/8thReport.pdf> (last visited on Jan. 10, 2021).
- Joanna Slater, “It was never easy being an interfaith couple in India. Now some states are making it harder.”, *The Washington Post*, Nov. 26, 2020, available at: [https://www.washingtonpost.com/world/asia\\_pacific/love-jihad-india-interfaith-marriage/2020/11/25/a8b33bea-2df9-11eb-9dd6-2d0179981719\\_story.html](https://www.washingtonpost.com/world/asia_pacific/love-jihad-india-interfaith-marriage/2020/11/25/a8b33bea-2df9-11eb-9dd6-2d0179981719_story.html) (last visited on Jan. 10, 2021).
- Abhinav Chnadrachud, “UP’s ‘love jihad’ ordinance has chilling effect on freedom of conscience”, *The Indian Express*, Dec. 3, 2020, available at: <https://indianexpress.com/article/opinion/columns/up-love-jihad-law-religious-conversion-anti-conversion-law-7078370/> (last visited on Dec. 30, 2020).
- Mariyam Alavi, “UP’s Anti-Conversion Law ‘Unconstitutional’, Say 4 Former Judges”, *NDTV*, Dec. 18, 2020, available at: <https://www.ndtv.com/india-news/love-jihad-ups-anti-conversion-law-unconstitutional-say-4-former-judges-2340694> (last visited on Dec. 30, 2020).
- Manu Sebastian, “UP Ordinance Criminalizing Religious Conversion on Marriage is an Assault on Personal Liberty”, *Live Law*, Nov. 30, 2020, available at: <https://www.livelaw.in/columns/up-ordinance-criminalizing-conversion-for-marriage-is-an-assault-on-personal-liberty-166575> (last visited on Dec. 30, 2020).
- Draft Bill The Uttar Pradesh Freedom of Religion Act, 2019, “Chapter XV of the Eighth Report on Freedom of Religion” (November, 2019), available at: <http://upslc.upsdc.gov.in/MediaGallery/8thReport.pdf> (last visited on Jan. 10, 2021).
- *Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475; *Soni Gerry v. Gerry Douglas*, (2018) 2 SCC 197; *Shafin Jahan v. Ashokan K.M.*, (2018) 16 SCC 368).

<sup>12</sup> Atul Chandra, “SC Rebuke has its Effect: UP Mulls Law to Regulate Religious Places”, *The Leaflet*, Jan. 9, 2021, available at: <https://www.theleaflet.in/sc-rebuke-has-its-effect-up-mulls-law-to-regulate-religious-places/#> (last visited on Jan. 10, 2021).