

IS THE U.P PROHIBITION OF UNLAWFUL CONVERSION OF RELIGION ORDINANCE, 2020 CONSTITUTIONALLY VALID?

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ABSTRACT

The recently introduced Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 “has faced staunch opposition from certain sections of society. Even though the law proposes steps to protect victims against fraud, coercion, and deception, it has received criticism due to the circumstances surrounding its implementation. Although the proposal treats all religions equally and is consistent with the fundamental rights to freedom of religion and the liberty to marry the person of one's choice, detractors continue to look for flaws where none exists. This article highlights the positive impact that widespread implementation of such an ordinance might have on rural India as well as the constitutional issues that it may encounter by providing an example of the demography that the ordinances affect.”

Keywords: Ordinance, Constitution, Fundamental Rights, Conversion, Unlawful

INTRODUCTION

The ordinance strengthens the method “for religious conversions, adding a layer of complication to the process by increasing the number of steps and the amount of time it takes to complete. This not only gives the sufferer time to seek aid but also allows them to reconsider their decision to convert to a new religion. The procedure requires the person seeking conversion and the person performing the conversion to make a declaration of the same to the office of the competent District Magistrate 60 and 30 days in advance, respectively. The District Magistrate will subsequently conduct a thorough investigation into the proposed conversion's aim and purpose.”ⁱ”

Furthermore, within 60 days of the conversion, the converted individual must provide a self-attested declaration. The District Magistrate next exhibits the declaration and records objections in front of the public. Within 21 days of receiving the declaration, the converted person must appear in front of the District Magistrate's office to establish their new identity and validate its contents. The regulations make it illegal to convert to another faith only based on coercion, misrepresentation, undue influence, allurements, fraud, or marriage. The individual who facilitates the conversion bears the burden of proof for the legality of the conversion. The provisions, on the other hand, allow an individual to return to their old religion without having to go through this lengthy process. The proposed legislation makes the crime of unlawful conversion punishable by a fine and a range of punishments depending on whom the victim is. These offenses are distinct in that they are both cognizable and non-bailable. Furthermore, under civil law, the offender is obliged to pay up to five lakh rupees in compensation to the victim of conversion. Repeat offenses of this sort will be punished twice as harshly as the first time.

CONSTITUTIONALITY OF THE ORDINANCE

Several clauses in the Ordinance are not only in violation of the Indian Constitution, but also have the potential to become a weapon of violence against interfaith marriages. For example, under Section 3 of the Ordinance, converting someone by promising them an "allurement" is a criminal offense. The term "allurement" is defined extensively under Section 2(a) of the law and includes even a gift to the person who will be converted. This means that if a Christian

gives a Hindu a copy of the Holy Bible and the Hindu decides to convert to Christianity after reading it; the conversion will be classified as a conversion by allurement under the Ordinance.

I. Violative of Article 14:

Making religious conversions “the sole ground for declaring a marriage void or imposing the onerous requirements that parties in an interfaith marriage must comply with, such as giving prior notice of conversion and a post-conversion notice of declaration, is discrimination based on religion, according to the Uttar Pradesh ordinance. Article 14 of the Constitution's equality guarantees demand that all people be afforded equal legal protection. This is in addition to Article 15's promise of non-discrimination, which states that the state shall not discriminate against any person solely based on religion, race, caste, sex, place of birth, or any combination of these factors. Imposing such restrictions on marriage only on the ground of religion amounts to discrimination and a violation of the right to equality.”

Women are treated as a separate category under Section 5 of the UP law, with the conversion of women punishable by up to ten years in prison. A marriage will be void if a woman switches to the religion of the male, according to Section 6. The distinction between men and women in terms of conversion is based on the assumption that women lack agency.

Equality is a dynamic notion with various sides and dimensions, “and it cannot be cribbed cabined and contained” inside traditional and doctrinaire limitations, according to **E.P Royappa v. State of Tamil Nadu**ⁱⁱ. Equality, from a positivistic perspective, is opposed to arbitrariness. In truth, equality and arbitrariness are mortal rivals; one belongs to the rule of law in a republic, while the other to an absolute monarch's whims and caprices. When an act is arbitrary, it implies that it is unequal both in terms of political logic and constitutional law, and is thus a violation of Art. 14, especially if it impacts public employment it is also violative of Art. 16. This case involved Class legislation and reasonable classification. Article 14 forbids class legislation but permits reasonable classifications. Class legislation means which makes improper discrimination by conferring particular privilege upon a class of persons arbitrarily selected from a large number of persons.”

Section 6 of the Ordinance empowers courts to declare invalid and void any marriage between a “man of one religion and a woman of another for the sole purpose of illicit conversion or vice versa.” A measure that discriminates substantively between men and women without justification is arbitrary and manifestly violates the principle of equality. This patriarchal and

overtly chauvinistic rule seeks to relegate women to the status of an unequal spouses in marriage, assuming that all women are gullible and susceptible to conversion.

In the case of **State of West Bengal v. Anwar Ali**ⁱⁱⁱ, “reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis. The Supreme Court laid down Seven Principles:

A) The presumption is always in favor of an enactment's constitutionality because it must be assumed that the legislature understands and correctly appreciates the needs of its people, that its laws are directed to problems that have been identified through experience, and that its discriminations are justified.

B) In some situations, the assumption can be rebutted by demonstrating that, on the face of the statute, there is no categorization or distinction specific to any individual or class and not applicable to any other individual or class, but the law only affects that individual or class.”

C) The principle of equality does not imply that every legislation must apply equally to all persons who are not in the same position by nature, attainment, or situation, and the differing demands of different classes of people frequently necessitate separate treatment.

D) The principle does not limit the State's ability to classify people for lawful reasons.

E) Every classification is likely to cause some inequality to some degree, but simply producing inequality is insufficient.

F) A law that treats members of a well-defined class equally is not offensive, and it cannot be accused of denial of equal protection on the basis that it does not apply to other people.

G) While “reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing.

The Apex court ruled in favor of the respondent, declaring the West Bengal special courts act unconstitutional because it granted the State Government arbitrary, unregulated, and unguided power that may be used irrationally and biasedly, as well as restricting equal protection of the laws. It was unable to differentiate between cases, classes of cases, offenses, and classes of offenses. Similarly, Section 5 of the UP Ordinance, 2020 discriminates against mass conversion penalties and breaches Article 14.”

II. Violative of Article 21:

Section 3 of the Ordinance prohibits “anybody from converting or attempting to convert another person either directly or indirectly from one religion to another by marriage, among

other things. The Section is poorly written and gives the government broad authority to prevent couples from marrying consensually following a voluntary religious conversion. This is primarily because it allows the administration to infringe on a person's fundamental freedom to pick a partner if they have not registered under the UP Ordinance's requirements.”

Furthermore, when a person violates Section 3 of the Ordinance, “Section 4 of the Ordinance allows any aggrieved individual, his or her parents, or any other person related by blood to file an FIR. It is argued that the Section not only elevates societal morality above constitutional morality, as the Supreme Court stated in **Navtej Singh Johar v. Union of India**^{iv} but also goes against the Supreme Court's progressive observations in *Shakti Vahini v. Union of India*. The Supreme Court held in *Shakti Vahini* that when two adults chose each other as life partners consensually, it is an expression of their choice recognized under Articles 19 and 21 of the Constitution. It further said that when two adults agree to marry, the agreement of their family, community, or clan is not required. The Ordinance, however, makes an exception to this fundamental freedom that is disproportionate to the exercise of the right itself. It was also stated that when two adults marry of their own free will, they pick their path; they complete their relationship; they believe it is their aim, and they have the legal right to do so. And it can be declared categorically that they have the right, and that any violation of that right is a constitutional violation.”

Any violation of **Section 3** of the Ordinance will result in “imprisonment for a term ranging from one to five years, as well as a fine, according to Section 5 of the Ordinance. If the violation is committed against a woman, a minor, or a member of a Scheduled Caste or Scheduled Tribe, the punishment will be a minimum of two years and a maximum of 10 years in jail, with a maximum fine of twenty-five thousand rupees. It goes on to say that if mass conversion is taking place in violation of Section 3, the punishment will be at least three years in prison and a maximum fine of 50,000 rupees. The section in question is unconstitutional because it ignores cases of individuals seeking conversion of their own free will. The Supreme Court acknowledged the right to convert as an integral aspect of the right to life and personal liberty” in **Shafin Jahan v. Asokan K.M**^v(hereafter "Hadiya case").

The Supreme Court of India held in **Lata Singh v. State of Uttar Pradesh**^{vi} that the freedom to “marry is a component of the right to life guaranteed by Article 21 of the Indian Constitution. The court went on to say that India is a free and democratic society and that after reaching the

age of majority, which is 21 for boys and 18 for girls, a person is free to marry whomever he or she wishes. The boy's or girl's parents have no right to intimidate or provoke violence against them. Further, in the case of **Shakti Vahini vs. UOI**^{vii}, the Supreme Court also reaffirmed that, under Article 21 of the Constitution, a person's right to marry, regardless of faith, is a basic right. The right to marry is not directly mentioned in the Indian Constitution, but it is construed under Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Allahabad High Court held in **Trishla Rai And Others v. the State of U.P**^{viii} that individual autonomy should be given top priority in such cases, and that, as later defined by the **K.S. Puttaswamy v. Union of India**^{ix} judgment, an individual's autonomy is the ability to make decisions in vital matters of life.”

The court in **Bhagwan Das v. State (NCT of Delhi)**^x prevented social evils including honor killings and love jihad, stating that these traditions are a manifestation of a feudal mindset that is a disgrace to the nation. The court's responsibility is to preserve an individual's fundamental rights, not to limit them except under limited circumstances. The courts must follow the law and rule of law, deciding the matter on legality rather than morality. The Indian Constitution specifically guarantees everyone's right to choose their religion and beliefs.

Clause 3 of Section 8, which “empowers the District Magistrate to initiate an investigation through the police to determine the true intention and purpose behind the conversion, is the greatest affront to the right to privacy. Social norms and morality have their place, but they are not above the constitutionally protected freedom, as the Supreme Court correctly stated in *Shafin Jahan v. Asokan K.M.* It is vital to one's autonomy to have the right to choose one's faith, and such a guarantee enhances the Constitution's key ideals. Police officers cannot be authorized to breach the private realms of persons in our constitutional democracy controlled by the rule of law, especially in an attempt to determine the cause for exercising the constitutionally guaranteed individual autonomy to conscience and religion. The Ordinance legitimizes the government's power to infringe on people's privacy by allowing them to convert to their spouse's religion of their own volition (protected freedom under Article 21 vs. Article 25) under the guise of determining the reason for the conversion. As a result, clause 3 is in complete derogation of the individuals' fundamental rights as stated below.^{xi}”

This Ordinance fails constitutional scrutiny on multiple grounds; Section 3 of the Ordinance prohibits religious conversions by deception, force, undue influence, compulsion, allurement,

or any other fraudulent means, as well as marriage. In addition, **Sections 8 and 9** of the Ordinance define the procedures for pre-and post-declaration of religious conversion. These provisions amount to an unreasonable intrusion into an individual's autonomy because they require a 60-day notice to the District Magistrate before the intended religious conversion, followed by a police investigation to determine the intent, cause, and purpose of the proposed religious conversion.

Furthermore, in **Seethalakshmi Ammal vs Ponnuswamy Nadar**^{xii}, the Supreme Court clearly said that no formal ceremony, legal procedures, or formalities are required before changing one's faith. As a result, this Section not only contradicts but also violates the way personal law was intended to work. The 235th Law Commission of India Report on 'Conversion/Reconversion to Another Religion' discouraged such a practice, stating, "It would be highly inappropriate to prescribe by way of legislation the details of ceremonies and formalities be followed for conversion or how conversions are to be proved in a Court of law."

"A law that encroaches into privacy will have to resist the touchstone of reasonable restrictions on basic rights, the Supreme Court stated in *K.S. Puttuswamy v. Union of India*, paragraph 325, to evaluate violation of the right to privacy by proportionality." In the framework of Article 21, a breach of privacy must be justified by legislation that specifies a fair, just, and reasonable approach. An infringement of life or personal liberty must meet three criteria: legality, which presupposes the existence of law; (ii) necessity, which must be defined in terms of a legitimate State goal; and (iii) proportionality, which ensures a rational relationship between the objects and the means used to achieve them."

As a result, we contend that, first and foremost, the law is illegal because it not only breaches the "fundamental right to privacy, but it also arbitrarily infringes on the fundamental right of individuals to practice and profess a faith of their choosing, as embodied in Article 25. Second, there is no evidence on record to support the State's goal of restricting conversion by marriage by making it illegal unless the converting person expressly states that the conversion is not voluntary. It is maintained that the Ordinance approved is arbitrary and so illegal because it lacks a valid State goal that overpowers individual liberty to pick a religion of one's choice and then a partner. Thirdly, it is argued that the means adopted to fulfill the unconstitutional aim is also an encroachment into the personal lives of individuals. The means ensure that any conversion of religion undergoes a strict investigation, thereby obstructing the liberty of the

individuals, and the object ultimately curbs couples from consensually converting their religion(s) through marriage.^{xiii}

The burden of proof for whether a religious conversion was carried out with free consent is placed on the individual who is accused of causing the conversion and committing an infraction under **Section 12** of the Ordinance. The burden of proof for proving the folly of conversion should, however, be placed on the State, not the accused. When read together, Sections 101 and 102 of the Evidence Act demonstrate that proof must be presented by the person who is impugning the crime, not the person who is being impugned. As a result, the State cannot infer that all conversions are irregular, unintentional, and "induced" by another person without first showing such irregularity in court.

MISUSE OF ORDINANCE MAKING POWER

In **RC Cooper v. Union of India**^{xiv}, the Supreme Court found that the President's decision to publish an ordinance might be challenged because "rapid action" was not necessary, and the ordinance was issued primarily to avoid debate and discussion in the legislature. The Supreme Court stated in **DC Wadhwa v. The State of Bihar**^{xv} that the executive's legislative power to issue ordinances should only be utilized in extraordinary circumstances and not as a substitute for the legislature's legislative function. The jurisdiction to make ordinances is not an absolute entrustment but is "conditioned upon satisfaction that conditions exist rendering prompt action required," as stated in **Krishna Kumar Singh v. The State of Bihar**^{xvi}. Furthermore, a healthy convention should emerge of expressing the immediate circumstances that exist to promulgate an Ordinance, because an Ordinance does not require debate and discussion as a regular law does. In this scenario, there was no pressing need to pass an ordinance amid the pandemic. If the ordinance was related to the coronavirus, action should have been taken right away.

ANTI-CONVERSION LAWS ARE UNNECESSARY

Existing laws are more than capable of dealing with the stated problem of conversions caused by coercion, allurements, or fraud. Ghose claims that general criminal law laws such as **Sections 295 A**^{xvii} **and 298**^{xviii} of the Indian Penal Code 1860, as well as many parts of the Code of Criminal Procedure Act 1973 and the Police Act 1861, could be used to address the problem.

There appears to be no worry among the majority of state governments that have not yet implemented anti-conversion legislation that they will be unable to prohibit or penalize those who engage in forced dialogues.

The discussion in the **Stanislaus Case**^{xix} centered on “Article 25 of the Indian Constitution, which states that public order may be used to limit religious freedoms, including profession and propagation of religion: Freedom of conscience and free profession, practice, and propagation of religion. (1) Subject to public order, morality, and health, and the other provisions of this Part, all persons are equally entitled to freedom of conscience and free profession, practice, and propagation of religion 30 The court's ruling was based on a distinction between a right to transmit one's religion (which the court allowed) and a right to convert a person to one's faith.”

MERIT OF THE ORDINANCE

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 just confirms “the Hon'ble Court's findings and adds severe penalties for religious conversions influenced by deception, force, fraud, undue influence, compulsion, allurement, or marriage. It does not ban voluntary consent-based conversion; rather, it prohibits marriage from being used as a vehicle for unlawful conversions. It also does not restrict anyone from lawfully preaching their religion. As a result, the ordinance complies with Article 25, and any concerns about its constitutionality are unjustified and can be put to rest.^{xx}”

Furthermore, “the terms 'Hindu,' 'Muslim,' 'Christian,' 'Parsi,' or religious majority or minority appear nowhere in the ordinance's 14 sections and three schedules. It was written in such a way that it applies equally to all citizens, regardless of their religion or gender identity. The legislation only reiterates what has already been declared illegal in many regions of the country, and it is merely a continuation of the protection sought from and granted by the state to victims of fraud, coercion, and deception.”

CONCLUSION

The Ordinance is unmistakably incompatible with the Constitutional concepts of equality, personal liberty, individual autonomy, liberal democracy, and limited government that has evolved over the last 70 years. One of the most significant consequences of the law is that it discourages social transformation through marriage and reintroduces cultural barriers in a state already highly divided along caste, religion, and gender lines.

This paper has uncovered the “need for widespread implementation of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, by analyzing its merits, and its perspective of it as an effective safeguard against unlawful conversion, and breaking down the areas of contention against the proposition. Unfortunately, in the pursuit of political correctness, it is all too easy to overlook fact-based reality and oppose policies that serve the public good.”

REFERENCE

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- ^{xviii} Section 298 of the Indian Penal Code criminalizes the uttering of words, etc, with deliberate intent to wound the religious feelings of any person.

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