

THE NEED OF THE HOUR: ANTI-CONVERSION LAW- Shaurya Mahajan¹**Abstract:**

This piece provides an analysis of the anti-conversion ordinance instituted in the state of Uttar Pradesh. It delves into the details of the Act and also explores its foundation. It takes on two perspectives in analysing the Act, namely a Legal perspective and a public policy one. It examines the requirement of the ordinance with the foundation and intended result from both these perspectives. It also examines the suit pending in court against the ordinance and explains how these claims lack merit. The piece also explains how the ordinance is aimed at tackling the issue of forced conversions. This piece cites various previous judgements of the Supreme Court along with the acts passed in several other states of the Union. The act highlights the desirability of such laws implemented throughout the Union and of the Uniform Civil Code (UCC). The piece concludes with the need for the ordinance to be converted into an Act and be implemented at the Union Level to further the cause of democracy, freedom and justice in the society, and to lead India to a better tomorrow.

Introduction

Our country India is the largest democracy in the world and is called the land of 'unity in diversity. Yet, the saddening fact is that we still have instances of communal disharmony, violence, and intolerance based on religion. Forced or coerced conversion is a very big problem in our country, The BJP government in the state of Uttar Pradesh under the able leadership of CM Shri Yogi Adityanath has taken several steps and implemented them effectively to tackle this problem.

Prohibition of Unlawful Conversion of Religion Ordinance, 2020:

On November 28, 2020, the Uttar Pradesh government passed the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020. This act is the best example of the developmental and transformational work that has taken place in the state under the

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incumbent BJP government. The ordinance is aimed at eliminating the problem of forced and fraudulent religious conversions and religious conversions solely for marriage. The ordinance imposes a maximum penalty of ten years in prison for violations of its provisions along with certain additional sanctions. Section 6 of the ordinance renders null and void marriages performed only for illicit conversion or vice versa. This act is something that has been in the limelight recently and has been opposed by many people with even a review petition being filed in the Supreme Court. The people opposing this law have either grossly misinterpreted it and need to be educated with regards to its intent, substance, and affectability or do not have the best interests of this nation in their hearts. Not to mention the fact that the review petition filed in the Supreme Court is completely baseless. We shall look into this from both the legal and public policy standpoints.

Legal Perspective

From a legal perspective this ordinance is alleged to violate the Allahabad high court's recent judgement in the Sufiya case which abolished the mandatory publication of notice and invitation to object under sections 5, 6, and 7 of the Special Marriage Act, 1954 by declaring those provisions to be declaratory and not mandatory and thus in violation. This claim as shall be found is completely invalid and baseless. The Supreme Court has confirmed in landmark judgments like the *Lily Thomas versus Union of India*, 2000 (6) SCC 224 and *Sarla Mudgal versus Union of India*, 1995 (3) SCC 635 that religious conversions conducted without a bona fide belief and solely to obtain some legal benefits are illegal and invalid. These incidents involved Hindu men converting to Islam to consummate bigamous marriages. The legal principle established in these judgments applies to instances of religious conversion solely for marriage. Interfaith marriage is already permitted by the Special Marriage Act, 1954, which is a legal privilege that the Uttar Pradesh government cannot interfere with. Still, it imposes substantial succession repercussions on the participants of such a marriage. Thus, for a Hindu, the law automatically partitions the individual's undivided family, depriving them of any future accrual to such property, whereas, for a Muslim, the law requires inheritance to be conducted under the Indian Succession Act, 1925 rather than under Muslim personal law following an interfaith marriage; the latter being more advantageous. Thus, the act of converting exclusively for marriage to circumvent the Special Marriage Act confers discernible legal benefits and may potentially be thrown down by the *Lily Thomas* and *Sarla Mudgal* dicta. Furthermore, the Supreme Court has already concluded

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in the *Rev. Stanislaus vs State Of Madhya Pradesh & Ors*, 1977 AIR 908 that religious proselytization is not protected under Article 25 of the Constitution. As a result, it is impossible to establish that the UP legislation is unconstitutional since it prohibits religious conversions for the sole purpose of marriage. Additionally, it is reaffirmed by the continuous and uncontested existence of equivalent legislation in states such as Uttarakhand and Himachal Pradesh. Forcible conversions are expressly forbidden under the Indian Constitution. To protect citizens' freedom of thinking, faith, belief, and worship, as well as their equality of status, is the State's primary role as a secular state. A dread psychosis has swept throughout society, putting the community at risk of forceful conversion. In *Rev. Stanislaus*, it was noted that forced conversions and abuses of freedom of conscience were conducted by non-state actors but insufficient state machinery, as mentioned in the UN Human Rights Council working committee reports. Examples of coerced conversion include a Hindu who marries a Muslim and is forced to convert to Islam. Conversion is forced since interreligious marriages are illegal under personal law, and most such conversions occur under duress.

Tackling Forced Conversions

The BJP has backed anti-conversion legislation and views it as a critical component of their policy against forced religious conversions. The law has been criticised for being "communal" and anti-Muslim. However, these laws safeguard the country's secular nature by prohibiting coerced conversions. Anti-conversion laws apply to everyone, regardless of religion. The law makes it abundantly clear that anyone who coerces a woman into changing her religion on the pretext of marriage, whether Muslim, Hindu or any other, will be prosecuted.

Shri Yogi Adityanath had accurately recounted how Dilshad changed his name to Amit, married a Hindu woman, and fathered an out-of-wedlock child as well. When his true identity was revealed, he forced his wife to convert to Islam. Later in life, he murdered his wife and daughter and buried them in his home. To protect women from such atrocities, an anti-conversion law was enacted. It is not a religious issue, but one of law and order.

Public Policy Perspective

From a public policy perspective, this is a much-needed policy that needs to be transformed into a proper act of firstly the state government and eventually the central government to give

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it the necessary legal foundation and authority to bring real change in society. This ordinance is aimed at solving one of the biggest and most discerning issues of our country in modern times and is the root cause of many other larger issues present in our country. The anti-conversion law needs to be but a stepping stone for a much larger and required law that needs to come into place i.e., Uniform Civil Code (UCC). This is something that was part of the vision of the framers of our constitution and as such, it has been enshrined in Article 44 of the Constitution as a Directive Principle of State policy. This simply explained is having a single uniform set of rules for civil law for all citizens of our country irrespective of their religion. This presents a secularistic view of the world and the basic civil law interactions we engage in. Currently, Goa is the only state in India to have this provision, but it is something that is much needed and should soon become an official act of the parliament of our country.

The anti-conversion law is the bridge that needs to be built to make this a reality, as first, we need to solve the problem at the micro level for particular symptoms and then after some time, initiate a properly planned full-scale effort on the full problem at the macro level.

Foundation

The policy recommendation on this derives its foundation from various sources, be it the intent of the constitutional framers, legal basis, or a socio-cultural basis of the public good. The policy does not violate any of the Fundamental Rights provided in the constitution and rather in a way protects an individual's right to freedom of religion covered under Article 25. The dismissal of the petition against the ordinance in the Supreme Court is of utmost importance as it would set a precedent for future anti-conversion laws. Active application of the anti-conversion laws enacted in states across India is another step that needs to be taken to give effect to the various policies and efforts that need to be maintained to ensure their proper implementation. Every state should have anti-conversion legislation. Anti-conversion legislation, particularly in states with a BJP majority, should be enacted to ensure that action is taken against forced conversions. Anti-conversion laws already exist in many states across India and even where they don't they are being discussed and brought in either in the form of ordinances or laws, a recent example of this is the state of Karnataka. The existence of similar provisions across different states strengthens the need for such provisions at the national level.

Conclusion

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Therefore, the work and the ordinance currently in effect is UP is a step forward for the entire country and we need to learn from it and take steps for the entire country. This also needs to become a proper law in the state itself. It truly represents the kind of work we need to be doing in our country and the vision for the kind of country we wish to live in in the future.



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