

Indian Laws on Conversion with special reference to the Uttar Pradesh prohibition of unlawful conversion of religion ordinance 2020

Dr Vijeta Verma

Assistant Professor, Christ (Deemed to be University) Delhi NCR, E-mail- vijeta@christuniversity.in

Dr Asha Rawat

*Assistant Professor, Faculty of Law, Jamnalal Bajaj School of Legal Studies, Banasthali Vidyapith
E-mail drashaphd@gmail.com*

Abstract

Conversion is a very integral part of one's life as it involves the human as well as Constitutional right of every human being around the world. It is highly debateable to identify whether the act of conversion is voluntary or involuntary or in a case free consent is not given by the converted person. A conversion in any religion without having any faith or belief in that religion is highly restricted and should not be allowed. After conversion one's life becomes changed in every sphere of law like maintenance, inheritance, succession, adoption, marriage and specifically the provisions related to the marriage. After marriage, if any person converts it becomes a ground for the divorce to the other spouse. Conversion to the religion of male side is not at all required to the consenting adults for the marriage as they can solemnize their marriage under the Special Marriage Act 1954 in which the interfaith marriages are solemnized without changing the existing religion. So, conversion is not at all required for the marriage of inter faith. This paper deals with the detailed study about the provisions enshrined under the said ordinance and to study about the different laws those are framed to deal with the inter faith conversion of a person nationally and internationally.

Key words- Conversion ; Ordinance; National laws; International Laws

Introduction

In India on 28th November 2020 an ordinance named as 'The Uttar Pradesh prohibition of unlawful conversion of religion ordinance 2020, been passed by the Governor of the Uttar Pradesh. The main motive behind the passing of this ordinance is to prohibit or punish a person from conversion from one religion to another which is induced involuntarily to a person by way of force, misrepresentation, undue influence, coercion, allurement and any form of fraudulent means or by marriage or for the matters connected therewith. The provisions of this ordinance are applicable on all communities and gender neutral. This ordinance clearly imposes restriction on the conversion of a person from one religion to another. It prohibits involuntary conversion punishable at all the

stages whether it is already committed or somebody attempts to convert any person into any religion in which that converted person doesn't have any faith or don't even want to practice the same. It is highly noticeable that conversion should be done involuntarily i.e., against the free consent of the person converted. Though conversion is a very personal affair of an individual which are governed by the personal laws of the concerned person apart from the personal laws of a person his right to freedom is also protected by the constitutional provisions which includes Right to Freedom as a fundamental right of every citizen of the state mentioned under Part III of Article 25 to 28. The three things should be considered while making any conversion the purpose, nature and objectives of such conversion should be clearly

mentioned by the person. The onus of proof is always lies on the person converted. It should be clear that the conversion should be voluntarily done should not be influenced by any means of fraudulent act.

Method

The methodology used to write this paper is entirely doctrinal. The study is based upon the data collected from the articles, journals, books and official websites, notifications of the government of India talks about the provisions of the conversion in India especially in the State of Uttar Pradesh in India.

Historical Background

In India a debate on casteism and religionism is not a new concept, though many laws have been framed but still interfaith marriages are still not warmly welcomed by the people in the society. Though we have a secular state but when it comes to have faith in another's religion it becomes a matter of political agenda. The history of the conversion can be traced in pre independence era nearly between 1930- 1940 when princely states mainly occupied by the Hindus were not allowed to convert in any other religion, it was basically deals with the anti inter faith conversion law for the Hindus categorically. The Princely states adopted some law to save the Hindus identity from the missionaries in India. Later in 1956, Central government propagates a new law based on freedom of religion which was not passed by the Parliament because of lack of majority opinion. From that onwards now the anti- conversion becomes the subject of the state government and now every state is free in its territory to legislate the laws related to the conversion.

Anti-conversion law in Uttar Pradesh which is passed by the state government is not a first law based on anti- conversion, The state of Orissa passed first anti conversion law named as 'Freedom of Religion Act, 1967 followed by another more seven states such as Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Uttarakhand. Further Tamil nadu and Rajasthan had also passed the similar enactments. The Tamilnadu legislation on freedom was religion was repealed after four years of its passing after a protest by agitated by the Christian

community, where as in State of Rajasthan the bill did not received the consent of the governor.

Overview of an Ordinance

The main purpose of this ordinance is to prohibit the conversion by means of any force, fraud, undue influence, any allurement, marriage, it also makes punishable to a person who is abetting, conspires, and convinced any one to make the conversion involuntarily as everyone has a right to convert but not without faith. This ordinance extends to whole of Uttar Pradesh. It consists of 14 sections and 3 schedules.

Section 2 deals with the interpretation clause which explains the definition of many words used in the ordinance like the definition of coercion, allurement, conversion, force, mass conversion, fraudulent means, minor, religion, religion convertor, undue influence and unlawful conversion.

Section 3 explain the prohibition of conversion made by any person to any person by means of fraud, force, allurement or by any fraudulent means, it is not only prohibits the commission of the conversion but also added attempt to do such act, this section further provided that the re conversion to his own religion will not attract the provision under this ordinance.

Section 4 explain the competency of person who can file an FIR related to involuntarily conversion. This ordinance empowers the aggrieved person, parents, brother, sister or any other person who is related with the blood, adoption or marriage may lodge FIR against the person according to the provisions of Criminal Procedure Code deals with the lodging of FIR.

Section 5 explain the provisions for the punishment to the offender in contravention of section 3, it provides that whoever commits or attempts to commit such offence will be punishable with the imprisonment not less than the term of one year and may extend to the term of 5 years, shall also be liable to pay the fine of rupees not less than 15, 000. Whatever offence committed under this ordinance will not fall under the definition of civil offence. Section 5(1) further clarifies that whoever carries out or endeavor such crime with a minor, woman or with a person belonging from the scheduled caste or scheduled tribe he shall be punished with the imprisonment of a term not less than 2 years and may extends to 10 years with fine

which may extends to rupees 25,000 and further if the conversion falls under the definition of the mass conversion than he shall be punished with the imprisonment not less than 3 years which may extends to 10 years and shall also liable to pay the fine which may extends to rupees 50,000. Section 5(2) provides the provision related to the compensation in addition to the fine which may extends to rupees 5 lacs paid by the accused to the victim. Section 5(3) deals with the subsequent conviction for the similar offence than punishment will be doubled from the past one.

Section 6 deals with the provisions of marriage done for the sole purpose of unlawful conversion or vice versa shall be declared void whether the conversion is made before or after the marriage, it will be declared void by the family court and if that district doesn't have any family court than the court having the jurisdiction under the legal provisions.

Section 7 deals that all the offences under the ordinance will be cognizable and non bailable and shall be tried by the court of sessions.

Section 8 explains the provisions adopted before the conversion to any religion, it stated that who wish to convert himself or herself has to file a declaration before the district magistrate, additional district magistrate specifically authorized by the district magistrate at least 60 days in advance stated that his conversion is free from any kind of force, undue influence, allurement and with free will and consent. Section 8(2) deals with the provisions related to the person who will performs the ceremony of the conversion, that he is required to give one month advanced notice to the District magistrate or additional district magistrate who is authorized by the district magistrate to the district where the ceremony of the conversion will be performed. Section 8(3) on receiving the information with the help of the concerned police of that area the real intention, purpose and cause will be inquired by the district magistrate or additional district magistrate of that district. Section 8(4) explains that in contravention of sub section (1) and (2) the proposed conversion will be declared as illegal and void and will not allowed doing the conversion. Sub- Section 5 and 6 explains the provisions related to the infringement of the provision 1 and 2 sub section

8 which attracts punishment, former provides the punishment for the term of 6 months which may extends to term of 3 years and will also liable to pay the monetary penalty which shall not be less than rupees 10,000 while latter attracts the punishment which shall not be less than 1 year and that may be extends to 5 years and also liable to pay the fine which shall not be less than rupees 25,000.

Section 9 explain the declaration filed by the converted person after the conversion, it is mandatory to declare his conversion and for that sake he must sent his declaration about the conversion to the concerned District magistrate having jurisdiction to try such matters in the area where concerned person residing from last 60 days. Once the declaration has been received, that declaration should be displaced on the notice board of the concerned authority until it has been confirmed. Section 9(3) explains all whereabouts of the person filling the declaration. Within 21 days after filling the declaration the applicant has to appear before the concerned district court of his area to affirm and confirm about the statement made by him in his declaration. Statement made by the applicant should be recorded by the District Magistrate and it should be maintained in the registered made for this regard only, in case, if any objection raised against the conversion the District Magistrate may simply record the name and nature of the objectors. A copy of declaration, confirmation should be issued to the person concerned or to any other authorized person of the converted person. If any contravention is found in the statement and affirmation given by the concerned person under the same section then that conversion will be considered as illegal and void.

Section 10 of the ordinance deals with the punishment imposes on the organization and institution, if they found guilty in case of violation of any provision mentioned under this ordinance. Same will be punished according to the section 5 provisions and if they found guilty their license will be cancelled by the competent authority on receiving the reference made by the District magistrate. Sub section 2 further restricts the state government to provide any kind of fund to such organization and institution who infringes any provisions of the ordinance.

Section 11 defines the persons or parties to the offence it includes every person who commits the offence, who abets, conspired, instigate, counsels, convince or procures any person to convert his religion.

Section 12 explains with the provisions related to burden or onus of proof lies on person who has caused the conversion but where it is facilitated by any other person that concerned person, here the concerned person has to proof that his conversion is not influenced by any means mentioned under section 3 of this ordinance.

Section 13 deals with the power to remove the difficulties, where it is found any difficulty to give execute any provision or clause of the ordinance, in that case the State Government of the Uttar Pradesh is empowered to make new provisions in the official gazette but after keeping this in mind that it should not contravene the said provisions of the existing ordinance, but there they have to follow the time limit as they cannot make or substitute new provisions after passing of 2 years of this ordinance.

Section 14 to carry out the provisions of this ordinance the State government is empowered to provisions to carry the rules in the official gazette.

Law and Legislations

International Laws

The United Nation Declaration of Human Rights 1948, Article 18 explains that ‘Everyone has a right to freedom of thought, conscience and religion’ this right includes one’s right to change religion of his belief also as it is the Human right of every human being to live life according to one’s own wish and desire. The International Convention on Cultural Political Rights (ICCPR) also explains the freedom of religion as one’s faith and belief, and it guarantees the freedom of religion according to the provisions of Article 19 read with Article 18, it gives emphasis that people must not be denied or restricted to follow their religious beliefs. This Convention further provides under Article 18 that nothing may restrict the freedom to have or adopt a certain religion or belief.

The Human Rights Committee made clear in General Comment No. 22 that no one should be

compelled to reveal the religion to which he adheres.¹

Declaration of General Assembly, 1981 explains under the provisions of Article 1(1) that everyone has right to thought, conscience and religion. This article provides right to follow religion of his own choice and belief.

General Comment 22 Human Rights Committee- Para 3 –Article 18 clearly impose restriction as it includes the provisions which explained restriction against any type of limitation imposed on the freedom of thought and conscience or it also includes freedom to have or adopt a religious belief of one’s choice’. Para 5 further elaborate the freedom to have or adopt a religion or belief necessarily entails the freedom to choose a religion or belief, it also includes that a human being also has a right to replace one’s own current religion or belief with the another or to adopt the atheistic views, as well as it deals with the right to retain one’s religious beliefs.²

National Laws

Constitution of India–Part III (Article 25- 28) of the Indian Constitution enshrined the provisions related to the protection from any kind of unlawful act or form any kind of restriction imposed on the profession, prorogation and practice of one’s religion. Every person is free to enjoin his choice of religion and state is not allowed to interfere in it. Article 25 states that every person has a right to freedom of religion subjected to the public health, public order, morality etc. It gives freedom conscience and to propagate, practice and profess one’s religion freely. This article will not affect any existing laws and the state also empowered to frame the laws to encourage social welfare and reform. The state can regulate and can impose restriction of economic, political, financial or any type of secular activity associated with the religious practices.³

¹<https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1175&context=jlia> accessed on 15th July 2021.

² <https://www.ohchr.org/en/issues/freedomreligion/pages/standards.aspx#2> accessed on 18th July 2021.

³ Article 25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate

Article 26 deals with the establishing and maintaining institutions for the charitable and religious purpose. It also confers rights on every denomination to manage its religious affairs, they have the right to own and acquire any movable and immovable property to spread one's belief on religion. The denomination is under the obligation to administer the property belong to the religious institution in accordance with the legal provisions.⁴

Article 27 prevents any person from being compelled to pay any kind of taxes which refers with the payment of the cost incurred for the maintenance and promotion of any religious institution or establishment or any religious practices.⁵

Article 28 confined to the all the educational institution which is aided, maintained and recognized by the state. It states that all the educational institution fully funded by the state resources, no religious instruction will be provided. But Article 28 (1) will not be applied to those educational institutions administered by

religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

⁴ Article 26 of the Constitution of India - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

⁵ Article 27 No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

the states but established which are established under any endowment and trust, Article 28(3) further provides that a person attending any institute which is wholly or partially funded by the state he is not required to participate in any kind of religious teaching of that institute.⁶

Hindu Law –The Hindu Marriage act codifies that law related to the marriage among Hindus, so this Act does not allow the inter religion marriage, as conversion is also a ground for divorce under the provisions of section 13 of this act. His or her inheritance right which is specifically provided under the Hindu Succession Act comes to an end.

Muslim Law- According to the provisions of the Dissolution of the Muslim Marriage act, conversion is a ground for the divorce applicable on both the parties; husband and wife.

Special Marriage Act 1954 – This Act allows and permit the inter religion or inter faith marriage without changing the existing religion of both or any of the parties to the marriage, So there is no need to do the conversion before marriage.

So the parties willing to solemnize inter faith marriage can go through the provisions of the Special Marriage Act.

The Law Commission of India- 235th report of the law commission of India deals with the conversion and re conversion of the parties to the marriage. In its report The law commission has recommended that

- A declaration of the conversion to another religion should be forwarded or submitted to the authorized officer in charge of the

⁶ Article 28 (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

registration of marriage within one month of the conversion, it is a mandatory act.

- Once the declaration has been received that should be displaced or exhibit on the notice board of the office of the registering authority till the date of the confirmation is expired.
- The said declaration must conformed and includes all the required or claimed details of the converted party which specifically includes, name, birth date, permanent address, father/ husband's name, the existing religion of the applicant and also include every details of his converted religion, his place of conversion and nature of the process followed or adopted for the sake of conversion.
- After expiry of 21 days of filling the declaration the converted person is required to make appearance before the concerned registering officer for confirming his details of the declaration and other necessary required details related to the conversion. After recording all the needed facts for the conversion, the certify copy of the same should be provided to the converted person.⁷

Judicial Pronouncements

Shafin Jahan v. Ashokan K.M.⁸ popularly known as Hadiya marriage case – In this case the Kerala High court held that girl has been mislead and to become a Muslim for the sake of marriage and passed the judgement that marriage should be annulled, against the order of the Kerala High Court her husband moved to Supreme Court to set aside the order of the High Court, and after hearing all the facts in appeal the Apex court set aside the order given by the High Court and held that the Kerala High Court cannot use Article 226 (related to the writ petition before High Court) for the annulment of consenting adults marriage.

Rev. Stainislaus v. State of Madhya Pradesh⁹ The Apex Court of India upheld the validity of both the Acts based on conversion namely Orissa Freedom of Religion Act 1967

and Madhya Pradesh Dharma Swatantraya Adhiniyam 1968 held that right to propagate one's religion cannot impinge on the freedom of conscience of religion of other citizens and it does not grant right to convert another person's to one's own religion.

Lily Thomas V. Union of India¹⁰ and **Sarla Mudgal V. Union of India**¹¹ The Apex Court held that conversion to any religion will always been considered illegal and invalid if it not carried out with the good or bonafide intention and where the sole reason behind the conversion is to derive some legal benefits out of its provisions. So Conversion for the sake of solemnizing the marriage is not a valid ground of conversion hence illegal and invalid.

Punjabrao v. Dr. D.P. Meshram and others¹² The Apex Court held that compliance of particular rituals is not necessary at the time of conversion hence signature of the converted party in a register is not obligatory.

Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor)¹³ The Supreme Court held that the principle was reiterated that no formal ceremony of purification or expiation is necessary to effectuate conversion.

S. Anbalagan v. B. Devararajan and others¹⁴ The Apex Court describes the legal position in regard to caste status on conversion or re-conversion to Hinduism and held that no particular ceremony was prescribed for re-conversion to Hinduism.

M. Chandra vs. M. Thangamuthu and another¹⁵ The Apex Court Stated that there are two settled principles of the conversion first conversion to another religion should be declared and second religion community should accept the converted person.

Conclusion and Suggestions

Conclusion

Every person has his own human rights and after attaining the age of majority every human being

⁷ <https://lawcommissionofindia.nic.in/reports/report235.pdf> accessed on 2nd August 2021.

⁸ CrL.A 366/2018 (arising out of SLP (Crl.) 5777/2017)

⁹ AIR 1977 (1) SCC 677

¹⁰ 2000 (6) SCC 224

¹¹ 1995 (3) SCC 635

¹² AIR 1965 SC 1179

¹³ AIR 1971 SC 2352

¹⁴ AIR 1984 SC 411

¹⁵ (2010) 9 SCC 712

is free to choose his or life partner, with whom he wants to settled down and have family. The consenting adults of the conversion should be welcomed by the society and the state, as it is their human right as well as constitutional right which are enshrined under Article 21 of the Indian Constitution. Consenting adults wants to perform the interfaith marriage eloped from their homes as couple and family filed a case of abducting against them, sometimes it is also seen that they becomes the victim of the mob lynching as according to some religious groups it is against the social norms. On January 2021, Allahabad High Court stated that under the Special Marriage Act exhibition of the notice publically is not mandatory but it has no direct bearing on the Anti love jihad law, as it contains different provisions and includes to declare the conversion of any person on the official notice board is mandatory. This ordinance gives a new definition of conversion between the citizens and the state by allowing the state to intrude into the lives of its citizens, into their inter personal relations. This ordinance imposes restriction on the conversion of religion by every citizen of the state of Uttar Pradesh. Proper provisions should be complied in case of the conversion into religion. According to one of the article published by the India Today on 29 December 2020 that after passing of one month of the ordinance in Uttar Pradesh 51 persons were arrested by the police and out of which 14 cases were lodged by the family members and only 2 complaints has been received by the victim. According to the report it is often seems that religious groups are forcing the parents to lodge a report against the consenting adults those have converted their religion or eloped from their homes to get married.

The main purpose of this ordinance is to impose the restriction or to prevent any religious conversion which is done by any means of fraud, coercion, undue influence, allurements etc. This ordinance is not clear in many terms as it included in the definition of allurements a word gift, as it is very vague that gift can be anything a bouquet of flower, a house or it any be any movable or immovable property. So giving a bouquet of roses doesn't amounts to allurements. This ordinance violates the fundamental as well as the human right of an individual as it violates

the principles enshrined under the international provisions of UDHR and Indian Constitution. Marriage is a very solemn act of a person and conversion too. Everyone has a right to convert but not without faith. This ordinance has assuming and presuming that women are incapable to choose her life partner. Parents and guardians are forced to file the case against the parties to the conversion that should not be done as it is the sole discretion of every parent to lodge complaint or not. So this paper laid stress on the principle that conversion should be allowed into any religion of your choice but that should not be done by any fraudulent means and one should have a strong belief and faith on that converted religion.

Reference

1. Bakshi, PM (ed).(14) The Constitution of India, Universal Law Publication, Delhi.
2. Dr Diwan, Paras, (ed.).(3) Family Law, Allahabad Law Agency, Allahabad.
3. The Uttar Pradesh prohibition of unlawful conversion of religion ordinance 2020 available at https://prsindia.org/files/bills_acts/bills_state/uttar-pradesh/2020/UP%20Prohibition%20of%20Unlawful%20Conversion%20of%20Religion%20Ordinance,%202020
4. Fischer. Meghan G (June 2018). Anti Conversion Laws and International Response, Penn state Journal of law & International affairs, Vol.6 Issue 1, 11-13, available at [https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1175&context=jlia#:~:text=The%20International%20Covenant%20on%20Civil%20and%20Political%20Rights%20\(IC%20CPR\)%20acknowledges,of%20thought%20C%20conscience%20and%20religion.](https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1175&context=jlia#:~:text=The%20International%20Covenant%20on%20Civil%20and%20Political%20Rights%20(IC%20CPR)%20acknowledges,of%20thought%20C%20conscience%20and%20religion.)