

**IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
I.A. NO. _____ OF 2021
IN
WRIT PETITION (CRIMINAL) NO. 428 OF 2020**

IN THE MATTER OF:

Citizens for Justice and Peace

...PETITIONER

VERSUS

State of Uttar Pradesh & Ors.

...RESPONDENTS

APPLICATION SEEKING AMENDMENT OF WRIT PETITION

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ADVOCATE FOR THE PETITIONER / APPLICANT:

TANIMA KISHORE

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CRL. M.P. NO. _____ OF 2021
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APPLICATION SEEKING AMENDMENT OF WRIT PETITION

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
PETITIONER / APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition is pending before this Hon'ble Court.
2. That the Petitioner / Applicant is filing the present application praying for permission to incorporate certain amendments in the Writ Petition.

3. That the Writ Petition had been filed originally challenging the constitutional validity of the Uttarakhand Freedom of Religion Act, 2018 and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020. Subsequently, it came to the knowledge of the Petitioner / Applicant that the Himachal Pradesh Freedom of Religion Act, 2019 and the Madhya Pradesh Freedom of Religion Ordinance, 2020 have also been passed along the lines of the previously mentioned laws. It is for this reason that the present application is being filed praying that the Petitioner / Applicant may be allowed to amend the Writ Petition and incorporate the Petitioner / Applicant's case against the Himachal Pradesh and Madhya Pradesh laws.
4. That the following changes are being carried out in the Synopsis of the Writ Petition:

"The present writ petition under Article 32 of the Constitution of India is being filed by the Petitioner, thereby, challenging the constitutional validity of the Uttarakhand Freedom of Religion Act, 2018, Himachal Pradesh Freedom of Religion Act, 2019 and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, and Madhya Pradesh Freedom of Religion Ordinance, 2020."

"The Petitioner humbly submits that the Indian citizens enjoy the Right to Privacy as a fundamental right but the Acts and the

Ordinances are unconstitutional as they attempt to control the life of the residents of Uttarakhand, Uttar Pradesh, Himachal Pradesh, and Madhya Pradesh, and to not allow them to take charge of the significant decisions in their life.”

“With the Acts and Ordinances in place, only residents of these four States will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other, or even if an interfaith couple merely decides to get married, with or without conversion. Moreover, the impugned Acts and Ordinances impose obligations of prior intimation, registration, scrutiny, and police enquiries as a precondition to marriage, which are utterly unconscionable, and indeed obnoxious and unsustainable under our Constitutional scheme.”

5. That the following changes are being incorporated in the List of Dates:

30.08.2012 A learned Division Bench of the Himachal Pradesh High Court, in Evangelical Fellowship of India v. State of Himachal Pradesh, 2012 SCC Online HP 5554; 2013 (4) RCR 283 (Civil), struck down the provisions of section 4 of the Himachal Pradesh Freedom of Religion Act, 2006, rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007, and rule 5 to the extent it applied to section 4 of the Act, holding that the said provisions violated Article 14 of the Constitution of India. The struck down section 4 provided that any person intending

to covert from one religion to another was required to give prior notice of thirty days to the District Magistrate, who shall get the matter enquired into by such agency as he deems fit. Rule 3, and part of rule 5, pertained to the mode and manner of issuing such prior notice, and the investigation and Police enquiry to be conducted thereon.

06.11.2019 The Himachal Pradesh Freedom of Religion Act, 2019 was published in the Official Gazette, having been assented to by the Governor on 29.10.2019. This Act, which is described in its Preamble as a re-enactment of the law to provide freedom of religion by prohibition of conversion, added several provisions dealing with “conversion by marriage”, and by sections 7 and 9 reintroduced even more obnoxious and unconstitutional provisions of prior notice, enquiry and investigation than were contained in the struck down provisions of the 2006 Act. The Act (13 of 2019), cast a reverse burden of proof upon the person converted, and made the offences, including the “offence” of getting married, cognizable and non-bailable.

18.12.2020 The provisions of Himachal Pradesh Freedom of Religion Act, 2019 came into force, as notified by the State Government of Himachal Pradesh. The Act was brought into force even though its provisions were ex facie violative of the above-mentioned Division Bench judgment of the Himachal Pradesh High Court.

9.1.2021 The Madhya Pradesh Freedom of Religion Ordinance, 2020 received the Governor's assent.

6. That the State of Himachal Pradesh and the State of Madhya Pradesh are being added as Respondent No. 3 and Respondent No. 4 respectively since the Writ Petition seeks to challenge the constitutional validity of the Himachal Pradesh Freedom of Religion Act, 2019 and the Madhya Pradesh Freedom of Religion Ordinance, 2020.

7. That the following changes are being carried out in paragraph 1 of the Writ Petition:

“The present Public Interest Litigation is being filed under Article 32 of the Constitution of India to seek issuance of an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 (The Act), Himachal Pradesh Freedom of Religion Act, 2019 (Himachal Pradesh Act) and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (The Ordinance), and the Madhya Pradesh Freedom of Religion Ordinance, 2020 (Madhya Pradesh Ordinance)-which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court.”

8. That the following changes are being carried out in paragraph 4 of the Writ Petition which deals with the facts of the case:

“4.12. In 2006 the Himachal Pradesh Legislature enacted the Himachal Pradesh Freedom of Religion Act, 2006. By its judgment dated 30.08.2012, a learned Division Bench of the Himachal Pradesh High Court, in *Evangelical Fellowship of India v. State of Himachal Pradesh*, 2012 SCC Online HP 5554; 2013 (4) RCR 283 (Civil), struck down the provisions of section 4 of the Himachal Pradesh Freedom of Religion Act, 2006, rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007, and rule 5 to the extent it applied to section 4 of the Act, holding that the said provisions violated Article 14 of the Constitution of India. The struck down section 4 provided that any person intending to convert from one religion to another was required to give prior notice of thirty days to the District Magistrate, who shall get the matter enquired into by such agency as he deems fit. Rule 3, and part of rule 5, pertained to the mode and manner of issuing such prior notice, and the investigation and Police enquiry to be conducted thereon.

4.13 In 2019, the Himachal Pradesh Legislature enacted The Himachal Pradesh Freedom of Religion Act, 2019, (hereinafter referred to as “the Himachal Pradesh Act” for sake of brevity), which received the Governor’s assent on 29.10.2019 and was published in the Official Gazette on 06.11.2019. This Act, in its Preamble, is described as a re-enactment of the law to provide freedom of religion by prohibition of conversion from one religion to another. The most significant change enacted in the 2019 law (Act 13 of 2019) was to add several provisions pertaining to “conversion by marriage”, the sole aim of which appears to be to stifle and hinder interfaith marriages. Surprisingly, prior notice and investigation provisions which are even more obnoxious and unsustainable than those in the 2006 Act have been re-enacted, completely ignoring the judgment of the High Court, which had become final and binding upon the State. However, the 2019 Act was brought into force by a Notification issued under section 1(2) thereof, only on

18.12.2020, . The Himachal Pradesh Act was enacted “to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage and for matters connected therewith and incidental thereto”.

4.14. Section 3 of the Himachal Pradesh Act provides that no person shall convert or attempt to convert either directly or otherwise any other person from one religion to another by misrepresentation, force, undue influence, coercion, inducement or any other fraudulent means or by marriage nor any person is allowed to abet or conspire to convert.

4.15. Section 4 of the Himachal Pradesh Act provides that a person who is found guilty of section 3 will be punished with imprisonment from 1-5 years and fine and whoever contravenes the provisions of section 3 with respect to a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 7 years and shall also be liable to pay fine.

4.16. Section 5 of the Himachal Pradesh Act provides that any marriage done for the sole version of conversion by a person of one religion with a person of another religion either by converting himself before or after marriage or by converting the other person before or after marriage will be declared null and void by the family court.

4.17. Section 7 of the Himachal Pradesh Act provides that one who desires to convert his or her religion should give a declaration on the proforma as may be prescribed at least thirty days in advance to the District Magistrate or the Executive Magistrate specially authorized by District Magistrate, that he wishes to convert his/her religion on his/her own and with his or her free consent without any force, coercion, undue

influence or allurement. It does not require a notice from a person who wishes to reconvert to his parent religion. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a one month's advance notice on the proforma as may be prescribed of such conversion to the District Magistrate or any other officer appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed. This will be followed by a police inquiry to ascertain the real intention, purpose, and cause of the proposed religious conversion.

4.18 Section 11 of the Himachal Pradesh Act provides that parties to the offence would include every person who actually does the act, who does or omits to do any act aiding or enabling another person to commit the offence, every person who aids or abets, counsels or causes any another person in commission of offence and that they will be found guilty and will be charged as if he had himself committed the crime. Section 12 of the Act places the burden on proof on the person so converted and also the person who facilitated the conversion.

4.19 The Madhya Pradesh Freedom of Religion Ordinance, 2020, (hereinafter referred to as “the Madhya Pradesh Ordinance” for sake of brevity) received the Governor’s assent on 09.01.2021 after it was passed by the Madhya Pradesh State Assembly on 26.12.2020. The Madhya Pradesh Ordinance was enacted “to provide freedom of religion by prohibiting conversion from one religion to another by misrepresentation, allurement, use of threat or force, undue influence, coercion, marriage or any fraudulent means and for matters connected therewith and incidental thereto.”

4.20 Section 3 of the Madhya Pradesh Ordinance provides that no person shall convert or attempt to convert either directly or otherwise

any other person from one religion to another by misrepresentation, allurements, force or threat to force, undue influence, coercion, or by any other fraudulent means or abets or conspires such conversion. Section 4 of the Madhya Pradesh Ordinance provides that a police officer can inquire into matters of such conversion only upon a written complaint by the victim or the parents, siblings, or with the leave of the court any relative related by blood, marriage, adoption, guardianship or custodianship.

4.21 Section 5 of the Madhya Pradesh Ordinance provides that a person who is found guilty of section 3 will be punished with imprisonment from 1-5 years and fine which shall not be less than twenty five thousand rupees and whoever contravenes the provisions of section 3 with respect to a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 10 years and shall also be liable to pay fine not less than fifty thousand rupees. Whoever conceals his religion before marriage shall be punished with imprisonment from 3 to 10 years and shall also be liable to pay fine not less than rupees fifty thousand. Whoever contravenes section 3 in cases of mass conversions wherein more than two persons are converted at the same time, he shall be punished with imprisonment from 5- 10 years and shall also be liable to pay fine not less than one lakh rupees.

4.22. Section 6 of the Madhya Pradesh Ordinance provides that marriages performed with an intent to convert a person shall be declared null and void by a Family Court. Section 10 of the Madhya Pradesh Ordinance that one who desires to convert his or her religion should give a declaration in a prescribed form at least sixty days in advance to the District Magistrate to convert his/her religion on his/her own and with his or her free consent without any force, coercion, undue

influence or allurement. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a sixty days advance notice on the prescribed form of such conversion to the District Magistrate where such ceremony is proposed to be performed and on receiving such notice the District Magistrate must acknowledge it. If a religious priest contravenes such provisions, he will be punished with imprisonment for 3 to 5 years and shall be liable to pay fine not less than fifty thousand rupees.

4.23 Section 12 of the Madhya Pradesh Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the accused. Section 14 also provides that no Police Officer below the rank of the Sub Inspector will investigate any offence registered under the Madhya Pradesh Ordinance.”

9. That the following annexures are being added to the Writ Petition:

“The true and correct copy of the Himachal Pradesh Act titled The Himachal Pradesh Freedom of Religion Act, 2019 is marked and annexed hereto as **ANNEXURE P-22.**”

“The true and correct copy of the Madhya Pradesh Ordinance titled The Madhya Pradesh Freedom of Religion Ordinance, 2020 is marked and annexed hereto as **ANNEXURE P-23.**”

“The true and correct copy of the Himachal Pradesh Freedom of Religion Act, 2006 is marked and annexed hereto as **ANNEXURE P-24.**”

“The true and correct copy of the Judgment of the Himachal Pradesh High Court in *Evangelical Fellowship v. State of Himachal Pradesh*, 2012 SCC Online HP 5554, is marked and annexed hereto as **ANNEXURE P-25**.

10. That the following grounds are being added to the Writ Petition:

T. Because the Himachal Pradesh Act has re-enacted the struck-down provisions of the 2006 Act, and indeed has done so in a form which is even more obnoxious and unconstitutional than the provisions which were struck down by the Honourable High Court of Himachal Pradesh in *Evangelical Fellowship of India v. State of Himachal Pradesh* 2013 (4) RCR 283 (Civil); 2012 SCC Online HP 5554.

U. Because this is a case of patent Legislative overreach and an attempt to legislatively overrule a binding declaration of law by the competent High Court, without in any manner removing the unconstitutionality pointed out by the High Court.

V. Because the Himachal Pradesh Act was notified one month after the Uttar Pradesh Ordinance was promulgated and that it was not based on any substantial statistics of alleged love jihad instances but just following suit as other States were anticipating enacting similar laws

W. Because in *Mr Wajeed Khan H B vs The Commissioner Of Police* W.P.H.C No. 92 of 2020, the Karnataka High Court had held that adults can marry anybody of their choice and the impugned Acts and Ordinances stand in contravention of that very right by laying down unnecessary processes for someone marrying an individual from another religion as they have to profess their desire to do the same in comparison to couples belonging to the same faith. It was held:

4. "It is well settled that a right of any major individual to marry the person of his/her choice is a fundamental right enshrined in the Constitution of India and the said liberty relating to the personal relationships of two individuals cannot be encroached by anybody irrespective of caste or religion."

X. Because in *Evangelical Fellowship of India v. State of Himachal Pradesh* 2013 (4) RCR 283 (Civil) the Himachal Pradesh High Court had held

7. "Conversions in our country are permissible if the conversion is by the free will of the converttee. We are also of the opinion that each and every citizen of this country has a right not only to follow his own beliefs but also has a right to change his beliefs."

The Hon'ble High Court also took note of *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611 and observed that while the court had upheld the right to propagate a religion, in no uncertain terms did it hold that right to propagate

one's own views does not give any person the right to convert anybody else except if the person converts of his own free will. Because even as (Para 20) of *Evangelical* (supra) lays down that if a person changes his religion or belief of his own volition then the state has no role to play", the Himachal Pradesh Act interferes in this personal space of an individual's volition and mandates that a declaration be made to the administration to enquire into whether this conversion is being made voluntarily under section 7(3) of the impugned Himachal Pradesh Act.

Y. Because the enforcement of the Madhya Pradesh Ordinance comes in the face of harassment of young vulnerable couples who are deprived of their right to marry any individual on their free will and the Madhya Pradesh Ordinance is modelled on the Uttar Pradesh Ordinance, Uttarakhand Act and the Himachal Pradesh Act that penalises conversion from one religion to another for marriage.

Z. Because the Petitioner would like the liberty to delve deeper into the history of Love Jihad and how it has played over the years to divide the country with no official numbers or evidence of forced conversions and that the fears of rising 'love jihad' cases have been "baseless" from the very start. Even though the rhetoric of Love Jihad has been sold off quite often in India, especially starting from Kerala and Karnataka, the Government had admitted that the term 'Love Jihad' is not defined under the extant laws and no such case of 'Love Jihad' has been reported by any of the central agencies.

AA. Because there are various High Court judgments which reveal that no case of forced conversion is made out in most cases of inter-faith marriages which are often sensationalised. For instance, Kerala High Court held in *Anees Hameed v. State of Kerala* (2017) 4 KLJ 600 that:

10. *"We are appalled to notice the recent trend in this State to sensationalize every case of inter-religious marriage as either 'Love Jihad' or 'Ghar Wapsi' even if there was platonic love between the spouses before. The case on hand is also projected as 'Love Jihad' by the parents of Sruthi whereas Anees alleges a case of 'Ghar Wapsi' in a bid to coerce her to come back to the Hindu religion. Any centre for forcible conversion or re- conversion has to be busted by the police whether it be Hindu, Muslim or Christian lest it offends the constitutional right."*

Further, in *Sri C Selvaraj vs State of Karnataka* WPHC No. 158 of 2009, the Hon'ble High Court of Karnataka in 2013 recorded that there were no instances of Love Jihad and disposed the petition. It observed:

"Pursuant to the direction issued by this Court, status report is filed by the Police

2. According to the Learned Government Advocate, there are no incidents of Love Jihad in the State of Karnataka. He further submits that if any such incidents takes place in the State, Police would take appropriate action in accordance with law."

BB. Because provisions of the impugned Acts and Ordinances provide that complaints against unlawful conversion can be filed by an aggrieved person or his or her sibling, parents or anybody related by blood, marriage, adoption, custodianship or guardianship and this essentially sanctions the opinions of the entire society into an individual's personal decision to choose a partner and live peacefully without public scrutiny. That this does not only violate people's privacy but also is an assault on the personal liberty and right to live with dignity.

CC. Because by the recent order dated 12.1.2021, in *Smt Safiya Sultana vs State of Uttar Pradesh and Ors* Hab. Corpus No. 16907 of 2020, the Allahabad High Court has ruled that the publication of notice of intended marriage under 6 of the Special Marriage Act is not mandatory and that it violates an individual's Right to Privacy. It was held:

45. *"The interpretation of Sections 6 and 7 read with Section 46 containing the procedure of publication of notice and inviting objections to the intended marriage in Act of 1954 thus has to be such that would uphold the fundamental rights and not violate the same. In case the same on their simplistic reading are held mandatory, as per the law declared today, they would invade in the fundamental rights of liberty and privacy, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned."*

Since the provisions of the impugned laws also place similar conditions of notifying the District Magistrate prior to conversion, it's a violation of a couple's or an individual's privacy and needs to be struck down immediately.

DD. Because the Uttar Pradesh State Law Commission published a report dated 21.11.2019 titled "Eight Report of VII State Law Commission on Freedom of Religion (Along with Draft Bill of) The Uttar Pradesh Freedom of Religion Bill, 2019" to emphasise on the need to enact a new law to "curb and control the unlawful conversion." Because it does not give any official data on the menace or reason behind the enactment of such an Act in Uttar Pradesh and stands against conversions as it is allegedly happening against a woman's wish and that conversions affect public order and thus does not fall under the ambit of Article 25 that guarantees freedom of religion. This infantilises a woman's capacity to make her own choice and gives priority to public and community interests more than a person's fundamental right to choose his/her partner, autonomy, privacy, personal liberty etc. That this is the common mindset behind enacting the Uttarakhand Act, Himachal Pradesh Act and Madhya Pradesh Ordinance, in addition to the Uttar Pradesh Ordinance.

11. That the following prayers are being added to the Writ Petition:

- c) "Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Act - Himachal Pradesh Freedom of Religion Act, 2019 ultra vires of the Constitution of India;"

- d) “Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Ordinance - Madhya Pradesh Freedom of Religion Ordinance, 2020-ultra vires of the Constitution of India;”

12. That in addition to the Writ Petition, an application seeking stay being I.A. No. 135049 of 2020 had also been filed. The following changes are being incorporated in said application:

“1. That the Petitioner / Applicant is filing the accompanying Writ Petition praying for an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 Himachal Pradesh Freedom of Religion Act, 2019 and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 and the Madhya Pradesh Freedom of Religion Ordinance, 2020, which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon’ble Court. That the Applicant seeks leave to rely upon the contents of the accompanying Writ Petition for the sake of brevity.”

13. That the following prayers are being added to the application seeking stay:

- c) “Stay the operation of Himachal Pradesh Freedom of Religion Act, 2019 ultra vires of the Constitution of India;”
- d) “Stay the operation of Madhya Pradesh Freedom of Religion Ordinance, 2020;”

14. That the amended Writ Petition (including annexures) along with amended application seeking stay in Writ Petition (Crl.) No. 428 of 2020 are marked and annexed hereto as **ANNEXURE A-1 (Page No. 21-336)**.

15. That the present application is bona fide and made in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow amendment of the Writ Petition in Writ Petition (Crl.) No. 428 of 2020;
- B. Allow amendment of the application seeking stay being I.A. No. 135049 of 2020 filed in Writ Petition (Crl.) No. 428 of 2020;
- C. Take on record the amended Writ Petition (including annexures) along with amended application seeking stay in Writ Petition (Crl.) No. 428 of 2020;
- D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER /
APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

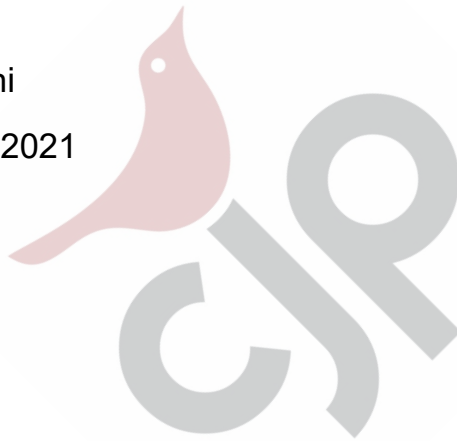


MS.TANIMA KISHORE

Advocate-on-Record for the
Petitioner/ Applicant

Place: New Delhi

Filed on: 10.02.2021



ANNEXURE -A-1

**IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
AMENDED WRIT PETITION (CRL) NO. _____ OF 2020**

IN THE MATTER OF:

CITIZENS FOR JUSTICE AND PEACE

THROUGH SECRETARY

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

WITH

I.A. NO. _____ OF 2020

APPLICATION SEEKING STAY OF THE
IMPUGNED ACT AND ORDINANCE**WITH**

I.A. NO. _____ OF 2020

APPLICATION SEEKING EXEMPTION FROM FILING
DULYAFFIRMED AFFIDAVIT AND VAKALATNAMA

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ADVOCATE FOR THE PETITIONER: TANIMA KISHORE

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Section –PIL						A
The case pertains to (Please tick/check the correct box):						
		Central Act: (Title)	NA			
		Section:	NA			
		Central Rule: (Title)	N.A.			
		Rule No(s):	N.A.			
		State Act: (Title)	N.A.			
		Section:	N.A.			
		State Rule: (Title)	N.A.			
		Rule No(s):	N.A.			
		Impugned Interim Order: (Date)	N.A.			
		Impugned Final Order/Decree: (Date)	NA			
		High Court:(Name)	NA			
		Name of Judges:	NA			
		Tribunal/ Authority: (Name)	N.A.			
1		Name of matter:		CRL	✓	
2	(a)	Petitioner	CITIZENS FOR JUSTICE AND PEACE			
	(b)	e-mail ID:	N.A.			
	(c)	Mobile phone No.	N.A.			
3	(a)	Respondent No. 1	STATE OF UTTAR PRADESH			
	(b)	e-mail ID:	N.A.			
	(c)	Mobile phone No.	N.A.			

4	(a)	Main Category classification:		1400	A-1		
	(b)	Sub Classification:		1407 Others			
5	Not to be listed before:			N.A.			
6A	Similar disposed of matter with citation, if any & case details			No similar disposed-off matter			
6B	Similar pending matter with case details			No similar pending matter			
7	Criminal matters:		CRL				
	(a)	Whether accused/ convict has surrendered:			Yes	✓	NO
	(b)	FIR No.	NA	Date	NA		
	(c)	Police Station:	NA				
	(d)	Sentence Awarded:			NA		
	(e)	Sentence Undergone:			NA		
8	Land Acquisition Matters:			N.A.			
	(a)	Date of section 4 notification:			N.A.		
	(b)	Date of section 6 notification:			N.A.		
	(c)	Date of section 17 notification:			N.A.		
9		Tax matters: State the tax effect:			N.A.		
10		Special Category (first petitioner/ appellant only):					

	Senior Citizen >65 years	X	SC/ST	X	Woman/Child A-2
	Disabled	X	Legal Aid Case	X	In custody
11	Vehicle Number (in case of Motor Accident Claim Matters):				N.A.
Date:	14.12.2020	 (MS TANIMA KISHORE) AOR for the petitioner(s): Code No.2867			

SYNOPSIS

The present writ petition under Article 32 of the Constitution of India is being filed by the Petitioner, thereby, challenging the constitutional validity of the Uttarakhand Freedom of Religion Act, 2018, Himachal Pradesh Freedom of Religion Act, 2019 and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, **and** Madhya Pradesh Freedom of Religion Ordinance, 2020. The Petitioner humbly submits that the Acts and the Ordinances have been enacted/brought in place *ostensibly* to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matter's incidental thereto.

The Petitioner humbly submits that the provisions of the impugned Acts and Ordinances, violate Article 21 of the Constitution as it empowers the State to suppress an individual's personal liberty. The impugned laws lay down the procedure to be followed by people who wish to convert from one religion to the other, not restricting to only inter faith marriages. The Acts and Ordinances seemed to be premised on conspiracy theories and assume that all conversions are illegally forced upon individuals who may have attained the age of majority. It mandates that a series of complicated procedures to be followed before and after conversion, taking the State into confidence to "ensure" that the act was an informed and voluntary decision by the individual. These provisions in the impugned laws place a burden on individuals to justify their personal decisions for State approval. It is the case of the Petitioners that this is a notion that is constitutionally repugnant and against a citizen's right to freely exercise his/her freedom of choice. The provisions of the impugned Ordinances and Acts impinge

upon an individual's right to freedom of choice, right to life and liberty as well as right to freedom of religion.

The Petitioner humbly submits that the Indian citizens enjoy the Right to Privacy as a fundamental right but the Acts and the are unconstitutional as they attempt to control the life of the residents of Uttarakhand, Uttar Pradesh, Himachal Pradesh, and Madhya Pradesh, and to not allow them to take charge of the significant decisions in their life. The Acts and the Ordinances allow for an unnecessary intrusion in the lives of people who have their autonomy compromised by the State. It is submitted that when the individuals have to approach the District Magistrate to validate their conversion for purpose of marriage or otherwise, violates this very right to privacy and disempowers individuals.

The Petitioner humbly submits that Article 25 of the Constitution provides every individual the 'freedom of conscience' and free profession, practice and propagation of religion. That this freedom of conscience entails that one can be non-religious and exercise the right to conscience or be religious and exercise the same right. That the decision to include the term propagate with profess and practice was in effect a recognition of India's plural, diverse and multi-faith reality that goes back centuries. That the Sanatan Hindu faith while not obviously proselytizing have, also from the period of Early India to Medieval India, by co-option absorbed those from Adivasi, Indigenous and Subaltern Faiths that were not until this co-option "Hindu." Hence as a necessary corollary of the group right of a religion to propagate, an individual must have the right to convert to any religion other than his own. Hence, the right to convert oneself to another religion is manifested in Article 25 of the Constitution. The Ordinances and the Acts

impinge upon this right by imposing unreasonable and discriminatory restrictions on it by mandating that the administration be informed of such intention and a probe be launched in such a personal and intimate exercise of one's right.

The Petitioner humbly submits that Article 14 of the Constitution of India provides that every citizen is equal before the law and that everyone is subject to the same laws of justice. Further, Article 15 and 16 enjoin on the State to treat all Citizens without Discrimination. With the Acts and Ordinances in place, only residents of these four States will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other. "Illegal" conversion under the Uttarakhand Ordinance attracts a punishment of 1-5 years in prison under section 5. However, if the victim of the illegal conversion is a minor, a member of the Scheduled Castes or Scheduled Tribes or, a woman, the punishment is doubled at 2-10 years behind bars. That in cases of inter-faith marriages, it is reportedly usually women who convert to men's religion and it is therefore the harsher punishment i.e. upto 10 years imprisonment which would be invoked in most cases. The provision views all women including economically weak, marginalised, privileged women to be susceptible to illegal conversions. The Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person. Ordinarily, in criminal cases, the Burden of Proof is on the prosecution to prove the guilt whereas the accused is treated innocent until proven guilty. It is only under this Ordinance, the burden of proof gets shifted and it is dangerous as it is a non bailable offence and also under a circumstance where they are pitched against hostile communities and family members who

masquerade in the glory of protection of women. A stereotypical attitude of a particular sex shall not hold legitimate claims under the Constitution of India. The Petitioner humbly submits that the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on the secular fabric that holds Indian democracy together.

The Petitioner humbly submits that the proviso to section 3 of the impugned Uttar Pradesh Act states that if “any person comes back to his ancestral religion, shall not be deemed conversion under this Act. Similarly section 3 of the impugned Uttarakhand Ordinance states that “..Provided that if any person re-converts to his/her previous religion, the same shall be not deemed to be conversion under this Ordinance.” Both provisos, by leaving definitions of the terms “ancestral” or “immediate previous” religion are vague and broad leaving the possible interpretations to be based on subjective criteria.

India as a secular, democratic republic with the basic right of equality of citizenship does not in any way or fashion privilege any person of one faith over another. Implementation of these Acts and Ordinances will imply all other religions being sought to converted into as products of force, fraud, coercion or seduction, in the present or in the past – hence illegitimate and deserving of annulment and punishment. B.R. Ambedkar’s way of thinking about the evils of caste, community and gender discrimination, was evidenced in the Constitutional provisions and subsequent laws like the Special Marriages Act. During the time of colonial period, it is documented that Babasaheb Ambedkar was in direct contact with the women who were acutely suffering of his own community and seen the realities of caste discrimination in day-to-day life as an insider belonging to the

caste of untouchable community. He had made attempts to erase the stratification among the castes by promoting inter caste and inter community marriages, secularising the society we live in. He actually prescribed inter-caste marriage as the real remedy for the abolition of caste and for India to move towards a casteless, equality driven society. The virulent times of today, thus, necessitate inter-caste and inter-faith marriage. While the law needs to play an enabling role in facilitating them, the law alone is not sufficient, as the small percentage of such marriages clearly indicate. It is time society and family blessed these marriages unequivocally and heralded a change that this country critically needs. The laws which are anti-conversion are essentially crimes against the autonomy of women, dictating terms on potential suitors from within the woman's community, caging her constitutional freedoms. Criminalising of every inter faith relationship awaiting the the State's blessings, and discouraging assertion of women voices is against the Constitutional vision that Babasaheb dreamt of.

The Petitioner humbly submits that both states, UP and Uttarakhand have had state level schemes to incentivise inter-religious marriages within their states. The scheme in undivided UP in 1976 provided an incentive of Rs. 10,000. In 2013, the same was increased to Rs 50,000. In 2017 however, the state of UP brought out a rule that if the interfaith couple converted after they got married, they would then lose the incentive. In the State of Uttarakhand the incentive of Rs 50,000 to inter-caste and inter-faith couples to encourage such alliances continue. There are however reports that, after resistance against such schemes by certain groups of people opposed to inter-caste and inter-religious marriages, the State of Uttarakhand is reportedly contemplating to end such monetary benefits given to inter faith unions. The Act and the Ordinance aims to take ten steps backward against the spirit of national unity and fraternity. It is clear that the Act and the

Ordinance have eroded the scheme that was promoting a progressive society and one that would encourage a society that sees beyond a religious lens to imbibe and adopt principles of brotherhood, fraternity and secularism as embodied in the Constitution. There is a central law called the Special Marriage Act, 1954 that holds all marriages where ceremony has been performed, where neither party has at the time of registration more than one spouse living; where neither is an idiot or lunatic; where parties have completed 21 years of age and where parties are not within prohibited degrees of relationship to be valid. This act makes no exception of cases where marriages can be declared null and void in case religious conversion takes place as is expressly stated in the Ordinances and the Acts. The Ordinances and the Acts, are repugnant to this central law to the extent that they declare those marriages void which are carried out for the sole purpose of conversion.

With the Acts and Ordinances in place, only residents of these four States will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other, or even if an interfaith couple merely decides to get married, with or without conversion. Moreover, the impugned Acts and Ordinances impose obligations of prior intimation, registration, scrutiny, and police enquiries as a precondition to marriage, which are utterly unconscionable, and indeed obnoxious and unsustainable under our Constitutional scheme. Hence, the present Writ Petition is being filed by the Petitioner.

LIST OF DATES AND EVENTS

24.04.1973 In *Kesavananda Bharati Sripadagalvaru and ors vs.*

State of Kerala and Anr reported in 1973 (3) SCC 225 , this Hon'ble Court held that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.

17.01.1977 *In Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, this Hon'ble Court while upholding anti-conversion laws in some states held that 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 religion.

11.03.1994 In *Bommai v. Union of India*, (1994) 3 SCC 1, this Hon'ble Court held that while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally. Any step inconsistent with constitutional policy is, in plain word, unconstitutional.

06.10.1998 Reports came out that the Gujarat police had set up special cells to 'investigate' inter-community marriages. The State's then Director General of Police, C.P. Singh had said in an interview with the Secretary of the petitioner that allegations of forced inter-religious marriages and conversions are entirely baseless in most cases.

15.04.2006 In an inquiry Report of the Deputy Police Commissioner, the Harbour Area Office, Mumbai it came out that Babu Bajrangi (convicted as one of the core conspirator in massacre that took place at Naroda Patiya, Gujarat in 2002) ran a trust called Navchetan Trust that claimed to have saved 700 girls who run out of their home and marry outside their community. The report stated that Babu Bajrangi abducted girls by separating them out of marriages with other caste boys into his community.

07.07.2006 In *Lata Singh vs State of Uttar Pradesh and Ors*, (2006) 5 SCC 475, it was held that

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. We sometimes hear of honour killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment."

- 30.8.2012 A learned Division Bench of the Himachal Pradesh High Court, in *Evangelical Fellowship of India v. State of Himachal Pradesh*, 2012 SCC Online HP 5554; 2013 (4) RCR 283 (Civil), struck down the provisions of section 4 of the Himachal Pradesh Freedom of Religion Act, 2006, rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007, and rule 5 to the extent it applied to section 4 of the Act, holding that the said provisions violated Article 14 of the Constitution of India. The struck down section 4 provided that any person intending to convert from one religion to another was required to give prior notice of thirty days to the District Magistrate, who shall get the matter enquired into by such agency as he deems fit. Rule 3, and part of rule 5, pertained to the mode and manner of issuing such prior notice, and the investigation and Police enquiry to be conducted thereon.
- 05.09.2014 News article titled “The Muzaffarnagar Model” published by NDTV which explored how “Love Jihad” spectre also formed the bedrock for the build-up of to the full fledged communal riots in 2013 that ravaged the region of Muzaffarnagar, Uttar Pradesh resulting in 62 people dead and displacement of close to 50,000 persons.
- 16.12.2014 In *Smt Noor Jahan Begum @ Anjali Mishra and Anr vs. State of U.P. and ors.* W.P [C] No. 57068 of 2014, it was

held that if a conversion is not inspired by religion feeling and under gone for its own sake, but is resorted merely with object of creating a ground for some claim of right or as a device adopted for the purpose to avoid marriage or to achieve an object without faith and belief in the unity of God (Allah) and Mohamed to be his prophet, the conversion shall not be bonafide.

29.01.2015 News Article titled “‘Love jihad’ in India and one man’s quest to prevent it” published by The Guardian giving true account of one such man in UP who claims to have coined the term ‘Love Jihad’

March 2017 “Anti-Romeo Squads” formed in UP Police comprising police, both men and women, in plain clothes and deployed at public places to check eve-teasing, indecent behaviour and passing of lewd comments at women and girls

05.01.2018 In *Soni Gerry vs Gerry Douglas*, (2018) 2 SCC 197 it was held that it needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice.

08.03.2018 In *Shafia Jahan vs Ashokan K.M*, 2018 16 SCC 368, it was held that intimacies of marriage, including the

choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms.

Uttarakhand Freedom of Religion Act tabled in the State Assembly.

21.03.2018

27.03.2018 In *Shakti Vahini vs Union of India and Ors*, (2018) 7 SCC 192, it was held by this Hon'ble Court that,

“Assertion of choice is an insegregable facet of liberty and dignity. this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness.

11.05.2018 Uttarakhand Freedom of Religion Act, 2018 received Governor's assent.

26.09.2018 In *KS Puttaswamy v Union of India*, reported in 2017 10 SCC 1 it was held that,

“Privacy is the constitutional core of human dignity... Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Personal choices

governing a way of life are intrinsic to privacy. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action.”

28.09.2018 *In Indian Young Lawyers Association vs The State of Kerala*, (2019) 11 SCC, it was held that

“While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail”

6.11.2019 The Himachal Pradesh Freedom of Religion Act, 2019 was published in the Official Gazette, having been assented to by the Governor on 29.10.2019. This Act, which is described in its Preamble as a re-enactment of the law to provide freedom of religion by prohibition of conversion, added several provisions dealing with “conversion by marriage”, and by sections 7 and 9 reintroduced even more obnoxious and unconstitutional provisions of prior notice, enquiry and investigation than were contained in the struck down provisions of the 2006 Act. The Act (13 of 2019), cast a reverse burden of proof upon the person converted, and made the offences, including the “offence” of getting married, cognizable and non-bailable.

23.09.2020 *In Priyanshi @ Km. Shamren and ors v. State of U.P and Anr* Writ C No. 14288 of 2020, the Hon’ble High

Court of Allahabad followed the precedent laid down in Noor Jahan Begum (supra) and noted that the girl was a Muslim by birth and she had converted to Hinduism, just a month before the marriage was solemnized. The court declined to interfere in the matter of providing police protection to the couple and said, In the aforesaid facts and circumstances, this Court is not inclined to interfere in the matter under Article 226 of Constitution of India.

31.10.2020 The Chief Minister of UP made the remarks while addressing a rally, *"We will also work to curb 'love-jihad', we'll make a law. It is my warning to those who play with the honour and dignity of sisters and daughters by hiding their real names and identities, if they do not mend their ways, the Ram Naam Satya journey will start"*

11.11.2020 In *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors* (Crl. Misc. Writ Petition No. 11367 of 2020), it was held by the Allahabad High Court that,

"Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown-up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India. We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own

free will and choice are living together peacefully and happily over a year. We hold the judgments in Noor Jahan and Priyanshi as not laying good law.”

- 23.11.2020 A report published by The Wire titled “Exclusive: UP Police Report Contradicts Adityanath Claim of ‘Rise in Love Jihad’” stated that Kanpur Inspector General of Police concluded that the majority of Hindu-Muslim romance cases probed were consensual. The SIT was formed after Hindutva activists met the Kanpur IGP to complain about incidents of ‘love jihad’.
- 24.11.2020 UP Government Promulgates Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020
- Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 received Governor’s assent
- 28.11.2020
- 02.12.2020 A news report by Times Now suggests that Uttar Pradesh Government may be considering withdrawing “The Intercaste and Interfaith Marriage Incentive Scheme” that was introduced in 1976 by the government at that time
- 04.12.2020 Uttar Pradesh Police intervened in a marriage ceremony between a 22-year-old Hindu Girl and 24-year-old Muslim boy that was about to take place in Lucknow

- 06.12.2020 A news report by The New Indian Express states that Uttarakhand is considering scrapping 'The Intercaste and Interfaith Marriage Incentive Scheme' that was introduced in 1976 by the government at that time, when it was part of state of Uttar Pradesh.
- 14.12.2020 Present Writ Petition was filed before this Hon'ble Court
- 18.12.2020 The provisions of Himachal Pradesh Freedom of Religion Act, 2019 came into force, as notified by the State Government of Himachal Pradesh. The Act was brought into force even though its provisions were ex facie violative of the above-mentioned Division Bench judgment of the Himachal Pradesh High Court.
- 9.1.2021 The Madhya Pradesh Freedom of Religion Ordinance, 2020 received the Governor's assent.

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. ____ OF 2020
[Under Article 32 of the Constitution of India]

MEMO OF THE PARTIES

IN THE MATTER OF :

Citizens for Justice and Peace

Through Secretary

... PETITIONER

VS.

1. State of Uttar Pradesh

Through Chief Secretary

Government of Uttar Pradesh

Room No. 10, Lok Bhawan,

U.P. Civil Secretariat

Vidhansabha Marg

Lucknow, Uttar Pradesh – 226 001

...RESPONDENT

NO.1

2. State of Uttarakhand

Through Chief Secretary

Uttarakhand Secretariat

Subhash Road, Irrigation Colony

Karanpur, Dehradun, Uttarakhand

...RESPONDENT NO.2

3. State of Himachal Pradesh

Through Chief Secretary

Himachal Pradesh Secretariat

Shimla- 171002

Himachal Pradesh

...RESPONDENT NO.3

4. State of Madhya Pradesh

Through Chief Secretary

MP Mantralaya,

Vallabh Bhavan, Bhopal-462004

Madhya Pradesh

...RESPONDENT

NO.4

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR
ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER
APPROPRIATE WRIT**

To,

The Hon'ble The Chief Justice of India And

His Lordship's Companion Justice of the Supreme Court of India

The Humble Petition of

The Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present Public Interest Litigation is being filed under Article 32 of the Constitution of India to seek issuance of an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 (**The Act**), Himachal Pradesh Freedom of Religion Act, 2019 (**Himachal Pradesh Act**) and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (**The Ordinance**), and the Madhya Pradesh Freedom of Religion Ordinance, 2020 (**Madhya Pradesh Ordinance**)-which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court.

1A. That the Petitioner herein is a registered organisation that has been working in the field of human rights for over 18 years. It is a human rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians. The email address of the Petitioner Organization is – cjpindia@gmail.com and the phone number is 022-26602288. The PAN of the Petitioner

Organization is AAATC4993J and annual income of the Petitioner was Rs. 99,74,326/- in the last financial year. In view of the urgency and paucity of time, the Petitioner was unable to make representation to the relevant authority. It is further submitted that there is no pending litigation of any nature involving the Petitioner which could have a legal nexus with the issues involved in the present Public Interest Litigation.

2. The Petitioner has been active in intervening in the courts and more particularly on aspects related to minority rights, forest rights, freedom of speech and expression, liberty, dignity, criminal justice reforms and child rights. It was founded in 2002 with the following objects:

To promote communal harmony in India.

- To promote friendship amongst people belonging to different religious communities.
- To combat all kinds of bigotry and intolerance which create inter-religious strife and differences among people.
- To promote values that will encourage the development of peace, justice and reconciliation, by all means, in every place, among all peoples of India and in every sphere of society.
- To build public opinion on the need for justice as an essential step towards reconciliation and peace.

- To check threats to Indian democracy and the Rule of Law, whether by governments or political parties or other organisations, groups or individuals.
- To make legal interventions in the Courts of Law through Public Interest Petitions or otherwise, to prosecute all those guilty of killing or maiming innocent citizens; and to assist others petitioning before the Courts for the redressal of grievances.
- To set up or assist in setting up any lawyer/team of lawyers to effectively intervene in government appointed commissions of inquiry probing the causes of communal conflict or to identify the role of different agencies in prevention or promotion of violence.
- To promote rationalism and tolerance and to promote religious and social reform including in particular reforms to improve the conditions of women and disadvantaged groups.

3. That apart from important matters and cases related to the Rights of Victims of Targeted Crimes, the Petitioner has been active in the area of implementation of the Forest Rights Act, 2006, and on the issue of Citizenship vis a vis inclusion and exclusion of genuine Indian citizens in the National Registrar of Citizens in the State of Assam.

4. FACTS OF THE CASE

The brief facts giving rise to the present petition are as follows:

4.1 The Uttarakhand Freedom of Religion Act, 2018 **(hereinafter referred to as “the Act” for sake of brevity)** received the assent of the Governor on 11.05.2018 after being tabled in the State Assembly on 21.03.2018 . It is an Act “to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters incidental thereto”. The true and correct copy of the Act titled Uttarakhand Freedom of Religion Act, 2018 is marked and annexed hereto as **ANNEXURE P-1** (Page No.97-103)

4.2 The Section 3 of the Act prohibits conversion or attempt to convert another person by use of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and does not considers reconversion back to ancestral religion as “conversion” under the definition of the Act. The proviso to section 3 of the impugned Act states that if “any person comes back to his ancestral religion, shall not be deemed conversion under this Act. Similarly section 3 of the impugned Ordinance states that “..Provided that if any person re-converts to his/her previous religion, the same shall be not deemed to be conversion under this Ordinance.” Both provisos, by leaving definitions of the terms “ancestral” or “immediate previous” religion are vague and broad leaving the possible interpretations to be based on subjective criteria.

4.3 Section 5 of the Act assigns maximum imprisonment of 5 years and minimum imprisonment of 1 year for contravention of section 3 and if the conversion is towards a minor or woman or person belonging to Scheduled Caste or Scheduled Tribe, the minimum imprisonment is 2 years and maximum imprisonment prescribed is 7 years.

4.4 Section 6 of the Act provides for declaration of a marriage that is done by the man of one religion with the woman of another religion either by converting himself before or after marriage or by converting the woman before or after marriage to be null and void; without specifying how the same will be determined.

4.5 Section 8 of the Act provides that any person who desires to convert his religion, shall give a declaration at least one month in advance, in the prescribed pro forma, to the District Magistrate or the Executive Magistrate specially authorised by District Magistrate that he wishes to convert his religion on his own and at his free consent and without any force, coercion, undue influence or allurement. It also requires the religious priest performing such conversion to give similar notice to the DM; after which the DM shall get an enquiry conducted through police, with regard to real intention, purpose and cause of that proposed religion conversion.

4.6 The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (hereinafter referred to as “the Ordinance” for sake of brevity) received the State Governor assent on 28.11.2020, four days after it was promulgated on 24.11.2020. The Ordinance prohibits “unlawful conversions” from one religion to another. It is an act to “to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any other fraudulent means or by marriage and for the matters concerned therewith or incidental to. The true and correct copy of the Ordinance titled Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 is marked and annexed hereto as **ANNEXURE P-2** (Page No.104-114)

4.7 Section 3 of the Ordinance provides that no person shall convert or attempt to convert either directly or otherwise any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage nor shall any person abet, convince or conspire such conversion provided that if any person reconverts to his/her immediate previous religion, the same shall not deemed to be a conversion under this Ordinance.

4.8 Section 5 of the Ordinance provides that a person found guilty of offence under Section 3 will be punishable with imprisonment from 1 to 5

years and fine of upto rupees fifteen thousand and contravention of Section 3 with respect to a minor, woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 10 years and shall also be liable to fine of upto rupees twenty-five thousand. Any person previously convicted under section 3, if found guilty for a second time, will be punishable with imprisonment for a term that shall not be less than 3 years but may extend to 10 years and shall also be liable to pay fine which shall not be less than rupees fifty thousand.

4.9 Section 6 states that any marriage which was done for the sole purpose of unlawful conversion or vice-versa by the man of one religion with the woman of another religion, either by converting himself/herself before or after marriage or by converting the woman before or after marriage, shall be declared void by the family court or where the family court is not established, by the court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage.

4.10 Section 8 provides that one who desires to convert his or her religion should give a declaration in the form prescribed in Schedule I at least sixty days in advance to the District Magistrate or the Additional District Magistrate specially authorized by District Magistrate, that he wishes to convert his/her religion on his/her own and with his or her free

consent without any force, coercion, undue influence or allurement. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a one month's advance notice in the form prescribed in Schedule II of such conversion to the District Magistrate or the Additional District Magistrate. This will be followed by a police inquiry to ascertain the real intention, purpose, and cause of the proposed religious conversion.

4.11 Section 9 mandates that a converted person should send a declaration in the form prescribed in Schedule III within 60 days of the date of conversion to the District Magistrate of the district within which the person ordinarily resides. The declaration should contain all requisite details including permanent address, place of residence, the religion to which the person originally belonged and the religion to which the person has converted. Thereafter, the converted individual should then appear before the District Magistrate within 21 days from the date of sending of declaration to confirm the contents of the declaration.

4.12. In 2006 the Himachal Pradesh Legislature enacted the Himachal Pradesh Freedom of Religion Act, 2006. By its judgment dated 30.08.2012, a learned Division Bench of the Himachal Pradesh High Court, in Evangelical Fellowship of India v. State of Himachal Pradesh, 2012 SCC Online HP 5554; 2013 (4) RCR 283 (Civil), struck down the provisions of section 4 of the Himachal Pradesh Freedom of Religion

Act, 2006, rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007, and rule 5 to the extent it applied to section 4 of the Act, holding that the said provisions violated Article 14 of the Constitution of India. The struck down section 4 provided that any person intending to covert from one religion to another was required to give prior notice of thirty days to the District Magistrate, who shall get the matter enquired into by such agency as he deems fit. Rule 3, and part of rule 5, pertained to the mode and manner of issuing such prior notice, and the investigation and Police enquiry to be conducted thereon.

4.13 In 2019, the Himachal Pradesh Legislature enacted The Himachal Pradesh Freedom of Religion Act, 2019, (hereinafter referred to as “the Himachal Pradesh Act” for sake of brevity), which received the Governor’s assent on 29.10.2019 and was published in the Official Gazette on 06.11.2019. This Act, in its Preamble, is described as a re-enactment of the law to provide freedom of religion by prohibition of conversion from one religion to another. The most significant change enacted in the 2019 law (Act 13 of 2019) was to add several provisions pertaining to “conversion by marriage”, the sole aim of which appears to be to stifle and hinder interfaith marriages. Surprisingly, prior notice and investigation provisions which are even more obnoxious and unsustainable than those in the 2006 Act have been re-enacted, completely ignoring the judgment of the High Court, which had become final and binding upon the State. However, the 2019 Act was brought

into force by a Notification issued under section 1(2) thereof, only on 18.12.2020, . The Himachal Pradesh Act was enacted “to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage and for matters connected therewith and incidental thereto”.

4.14 Section 3 of the Himachal Pradesh Act provides that no person shall convert or attempt to convert either directly or otherwise any other person from one religion to another by misrepresentation, force, undue influence, coercion, inducement or any other fraudulent means or by marriage nor any person is allowed to abet or conspire to convert.

4.15 Section 4 of the Himachal Pradesh Act provides that a person who is found guilty of section 3 will be punished with imprisonment from 1-5 years and fine and whoever contravenes the provisions of section 3 with respect to a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 7 years and shall also be liable to pay fine.

4.16 Section 5 of the Himachal Pradesh Act provides that any marriage done for the sole version of conversion by a person of one religion with a person of another religion either by converting himself before or after marriage or by converting the other person before or after marriage will be declared null and void by the family court.

4.17 Section 7 of the Himachal Pradesh Act provides that one who desires to convert his or her religion should give a declaration on the proforma as may be prescribed at least thirty days in advance to the District Magistrate or the Executive Magistrate specially authorized by District Magistrate, that he wishes to convert his/her religion on his/her own and with his or her free consent without any force, coercion, undue influence or allurement. It does not require a notice from a person who wishes to reconvert to his parent religion. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a one month's advance notice on the proforma as may be prescribed of such conversion to the District Magistrate or any other officer appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed. This will be followed by a police inquiry to ascertain the real intention, purpose, and cause of the proposed religious conversion.

4.18 Section 11 of the Himachal Pradesh Act provides that parties to the offence would include every person who actually does the act, who does or omits to do any act aiding or enabling another person to commit the offence, every person who aids or abets, counsels or causes any another person in commission of offence and that they will be found guilty and will be charged as if he had himself committed the crime. Section 12 of the Act places the burden on proof on the person so converted and also the person who facilitated the conversion.

4.19 The Madhya Pradesh Freedom of Religion Ordinance, 2020, (hereinafter referred to as “the Madhya Pradesh Ordinance” for sake of brevity) received the Governor’s assent on 09.01.2021 after it was passed by the Madhya Pradesh State Assembly on 26.12.2020. The Madhya Pradesh Ordinance was enacted “to provide freedom of religion by prohibiting conversion from one religion to another by misrepresentation, allurement, use of threat or force, undue influence, coercion, marriage or any fraudulent means and for matters connected therewith and incidental thereto.”

4.20 Section 3 of the Madhya Pradesh Ordinance provides that no person shall convert or attempt to convert either directly or otherwise any other person from one religion to another by misrepresentation, allurement, force or threat to force, undue influence, coercion, or by any other fraudulent means or abets or conspires such conversion. Section 4 of the Madhya Pradesh Ordinance provides that a police officer can inquire into matters of such conversion only upon a written complaint by the victim or the parents, siblings, or with the leave of the court any relative related by blood, marriage, adoption, guardianship or custodianship.

4.21 Section 5 of the Madhya Pradesh Ordinance provides that a person who is found guilty of section 3 will be punished with imprisonment from 1-5 years and fine which shall not be less than twenty five thousand

rupees and whoever contravenes the provisions of section 3 with respect to a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 10 years and shall also be liable to pay fine not less than fifty thousand rupees. Whoever conceals his religion before marriage shall be punished with imprisonment from 3 to 10 years and shall also be liable to pay fine not less than rupees fifty thousand. Whoever contravenes section 3 in cases of mass conversions wherein more than two persons are converted at the same time, he shall be punished with imprisonment from 5- 10 years and shall also be liable to pay fine not less than one lakh rupees.

4.22 Section 6 of the Madhya Pradesh Ordinance provides that marriages performed with an intent to convert a person shall be declared null and void by a Family Court. Section 10 of the Madhya Pradesh Ordinance that one who desires to convert his or her religion should give a declaration in a prescribed form at least sixty days in advance to the District Magistrate to convert his/her religion on his/her own and with his or her free consent without any force, coercion, undue influence or allurement. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a sixty days advance notice on the prescribed form of such conversion to the District Magistrate where such ceremony is proposed to be performed and on receiving such notice the District Magistrate must acknowledge it. If a religious priest

contravenes such provisions, he will be punished with imprisonment for 3 to 5 years and shall be liable to pay fine not less than fifty thousand rupees.

4.23 Section 12 of the Madhya Pradesh Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the accused. Section 14 also provides that no Police Officer below the rank of the Sub Inspector will investigate any offence registered under the Madhya Pradesh Ordinance.

5. That at this stage the Petitioner is making submissions on certain aspects of the Ordinance and the Act which are critical and need to be addressed and necessary directions be issued. The Petitioner reserves the right to make additional submissions during the course of the hearing of the Petition.

These grounds are:

- I. Right to Personal Liberty and Autonomy
- II. Right to Freedom of Choice of Adults
- III. Right to Privacy
- IV. Right to Conscience

V. Right against Discrimination

VI. Constitutional Obligations and Powers of Governors

VII. Secularism

VIII. Bhimrao Ramji Ambedkar's ideology

IX. State incentives for inter-faith marriages

X. Law Commission Reports

XI. International Law

XII. Evolution of Rights in Constitutional Courts and Interpretation of Law and Legislation

I. Right to Personal Liberty and Autonomy

6. That Article 21 of the Constitution of India reads, "No person shall be deprived of his life or personal liberty except according to procedure established by law." This is one of the most progressive and liberating provisions enshrined in the Constitution. The provisions of the Ordinance empower the State to throttle an individual's personal liberty. Section 8 of the Act and sections 8 and 9 of the Ordinance lays down the procedure to be followed by people who wish to convert from one religion to the other, not restricting to only inter faith marriages.

7. That section 8 of the Act provides that if any person who wants to convert contravenes section 8 of the Act shall be punished with imprisonment for a term which shall not be less than three months, but may extend to one year and shall also be liable to fine. A religious priest who contravenes section 8 of the Act shall be punished with imprisonment for a term which shall not be less than six months, but may extend to two years and shall also be liable to fine.

8. That section 8 of the Ordinance provides that a person undergoing religious conversion who violates Section 8 shall be punished with imprisonment between 6 months and 3 years and fine which is not below Rs. 10,000/-. A religious converter who violates Section 8 of the Ordinance shall be punished with imprisonment between 1 to and 5 years and fine which is not less than Rs. 25,000/-. Further, contravention of provisions of Section 9 of the Ordinance will render the conversion 'illegal and void'.

9. That point 4 of the Statement of Object and Reasons of the Act (Uttarakhand) states that, "We have come across incidents in which with an agenda to increase strength of their own religion by getting people from other religions converted to their own religion, people do marry girls of other religion by misrepresentation of their own religion and after getting marriage to such girls, they get them converted to their own religion. Several instances came to notice that people convert

themselves to the other religion only for the purpose of marriage with the girl of that -religion and after marriage they got that girl converted into their own religion. This Hon'ble Court also took judicial notice of such instances in the cases of SLP (Crl.) No.5777 of 2017 *Shafia Jahan v. Asokan K.M. & Ors.* and Writ Petition (Crl.) No.142 of 2016 *Aman Beg v. State of Madhya Pradesh & Ors.*”

10. That the impugned Act or the Ordinance does not mention conversion from one particular religion to another religion, by naming a religion. Though this makes it appear to be a broad Act and Ordinance that encompasses all religions under its umbrella and prohibits a person from converting to any religion, the Statement of Objects & Reasons (SOR) appears clearly to single out only one kind of conversion. The above mentioned cases of *Shafin Jahan (supra)* and *Aman Beg v State of Madhya Pradesh Writ Petition (Crl.) No. 142 of 2016*, relied itself upon by the Act in its Objects and Reasons singles out only one kind of conversion by singularly vilifying one community as conspiring to convert young girls and by implication Islam as a religion who's co-religionists, “*increase strength of their own religion by getting people from other religions converted to their own religion, people do marry girls of other religion by misrepresentation of their own religion*”. Both the cases relied upon by the Act in its Objects and Reasons focus on matters of

conversion to Islam and that the accused in both the cases belong to the Muslim community. It seems to be in extension of this Objective that the term “ Love Jihad” needs to be explored and elaborated. In fact the precedent relied upon by the Act, *Shafin Jahan vs Ashokan K.M* (2018 16 SCC 368), wherein in fact the Hon’ble Kerala High Court had flagged “concerns on Love Jihad/Jehad” and saw the entry of this vague terms into Indian jurisprudence, this Hon’ble Court, adjudicating the matter in fact, *upheld* the principles of pluralism and diversity in the society and perceives excessive state intervention to be damaging to an individual’s liberty and autonomy. It was held,

“86. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.”

11. That such encroaching and scrutinising powers of the State in an individual’s intimate choice to convert on his/her own volition is a grave

assault on an individual's personal liberty. That this Hon'ble Court in *Shafin Jahan vs Asokan K.M.* (2018) 16 SCC 368, emphasised on the ill effects of State intervention in such matters as under:

"23. The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation."

"Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom."

12. That, in fact, it was the *Shafin Jahan (supra)* case that had become, in Indian public and political discourse, a strong case for supremacist and extreme right-wing organizations to pitch the narrative of "love jihad". It was after the Kerala High Court judgment that the "Love Jihad" narrative gained strength despite the subsequent strong judgement of this Hon'ble Court. The systematic campaign against inter-faith

marriages presumed as “forced conversions” for the purpose of marriage and baseless rhetoric started gaining strength (and circulated widely over social media through WhatsApp forwards) that Muslim youths were paid sums for marrying Hindu women and converting them. An article by “The Guardian” gave a true account of one such man in UP who claims to have coined the term ‘Love Jihad’. The man, Vijaykant Chauhan had shown the reporter a WhatsApp forward that was a pamphlet declaring cash rewards for converting Hindu women. A true and correct copy of the article titled “‘Love jihad’ in India and one man’s quest to prevent it” dated 29.01.2015 published by The Guardian is marked and annexed hereto as **ANNEXURE P-3 (Page No_115-117)**

13. That the concept of Love Jihad is an illusory construct based on rhetoric to promote divisiveness in society, generate permanent suspicious attitudes towards Islam and the Muslim community and create enmity between communities and breach harmony. “Love Jihad” is not a notion that has developed over night and that it has been the constant effort of the sectarian Government to place extra constitutional trust at the hands of the Police. The idea developed from setting up, within the echelons of the state police certain cells to “investigate cases of inter-community and inter-caste marriages.” Among the first instances of such instances of moral policing were in the period between 1998-1990 in Gujarat and thereafter we have seen that this has manifest in Maharashtra, Chhatisgarh, Karnataka, Kerala, UP, West Bengal among

others. The Gujarat police set up the special cells to 'investigate' inter-community marriages and was an act of the state that is directly violative of the fundamental rights of equality before the law, Right to Life with Dignity and Right to Freedom of Faith. This was followed by massive resistance and disenchantment of people and a spate of writ petitions were even filed by couples who had voluntarily entered into marriage before the Hon'ble Gujarat High Court. The secretary of the petitioner organisation had then interviewed Gujarat's Director General of Police, C.P. Singh in Ahmedabad, telephonically from Mumbai on October 6, 1998 wherein he claimed that allegations of forced inter-religious marriages and conversions are entirely baseless in most cases. When he was asked about who was responsible for the disturbing spate of attacks on minorities — Christians and Muslims — in Gujarat since February, 1998 he said, *"It is individuals not organisations that can be arrested and nailed. But one thing was clear in the pattern of incidents. It was reportedly the activists of the Vishwa Hindu Parishad and Bajrang Dal activists who were taking law into their own hands which posed a serious danger to peace in Gujarat. Many of the attacks on the minorities were after these organisations had whipped up local passions on mere allegations of conversions (by Christian missionaries) and allegedly forced inter-religious marriages, where again conversion was supposed to be the alleged motive."* In the course of the interview, he informed the Petitioner further that investigations revealed that in most cases these

were entirely baseless allegations. A lot of hue and cry was raised even then about “forced marriages” but most of the incidents highlighted by them through the media were found incorrect. The then DGP, Gujarat even cited an example of the incidents at Randhikpur town in Panchmahal district (1998) where two women were allegedly kidnapped by Muslim youths and terror unleashed on Muslims of the village by the VHP and Bajrang Dal workers. Investigations revealed that the women had voluntarily left their families with these youths of their own volition and one of them had already married her boy-friend. A true and correct copy of the interview titled “Allegations of forced inter-religious marriages and conversions are entirely baseless in most cases” dated 06.10.1998 published by *Communalism Combat* is marked and annexed hereto as **ANNEXURE P-4 (Page No_118-119).**

14. That even more recently, now, on or around the Ordinance being promulgated, , this allegation of women being forcefully lured into marriage proposals by a certain community of people are contradictory to what the Uttar Pradesh Police has stated. The official report – submitted to Kanpur inspector general of police has concluded that the majority of Hindu-Muslim romance cases probed were consensual. The SIT’s report, concluded that in eight of the 14 cases, the Hindu women had either married Muslim men or been with them of their own free will. In six cases, the FIRs registered are still being investigated, though in one of those cases the accused Muslim man has been released on bail.

The SIT was formed after certain activists met the Kanpur IGP to complain about incidents of 'love jihad'. These groups got into the act after reports of a Kanpur woman, marrying a Muslim man emerged. Though she denied the claim that she had been forced to convert to Islam and even recorded a video to make this clear, her mother claimed she had said so under "pressure" and the UP government decided to order a probe. Such Act and Ordinance in place will further create divisions in the society to the prejudice and discrimination against the minorities who are bound to suffer and also impact the socio-economic development of the country. Apart from violating the Basic Structure Doctrine and violating basic and fundamental freedoms of Right to Equality, Right to Non-discrimination, Right to Equal Treatment by the State, both the Act and Ordinance seriously harm India's standing as the World's Largest Democracy in the International Community and the World Order and the Comity of Nations. A true and correct copy of the article titled "Exclusive: UP Police Report Contradicts Adityanath Claim of 'Rise in Love Jihad'" dated 23.11.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-5** (Page No. 120-127))

15. That in his opinion piece, former IPS Officer NC Asthana has pointed out how the vague language of the ordinance is a breeding ground for misuse. Both the ordinance and the Act make "convincing for conversion" a criminal act. "While abetment and conspiracy are

recognised in law, 'convincing' is not. This is pure fiction. Under this law, it could mean that if four Muslims happen to be discussing the merits of Islam at a teashop while a Hindu customer is also present and taking part in the conversation, they could be trying to 'convince' him to convert to Islam!," reads the article. Further, he also comments on the provision of the ordinance (a similar provision appears in the Act as well) which puts the burden of proof that the conversion was 'lawful' lies on the person who has 'caused' the conversion. "They do not bother to ask the person who has converted – his or her opinion does not matter at all. The government seems to be more interested in prosecuting and harassing the 'convertor'. For the sake of argument, even if it is granted that the government is keen on prohibiting forcible conversions, all that it needs is that the converted person be asked to depose before a judicial magistrate within a certain period of conversion and submit the statement to the government," he notes. A true and correct copy of the article titled "Legal Howlers in UP's 'Anti-Conversion' Law Expose its Real Intent" dated 07.12.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-6** (Page No._128-135)

16. That similar cells/groups with names like the nomenclature "Anti-Romeo Squads" were also formed in different states ostensibly to "protect" the honour of women. That these developments with the echelons of the police in effect arms the law and order machinery with unconstitutional power, leads to non-state actors taking law into their

own hands, often using violence, increase vigilance and patrol spaces occupied predominantly by the youth under the garb of protecting women from 'vicious' men who could corrupt them. These are nothing short of attempts to encroach on the privacy and freedom of individual citizens "protect women from stalkers and eve-teasers". Reportedly these often comprise of police, both men and women, in plain clothes and deployed at public places like schools, colleges, shopping malls, markets, parks, cinema halls and bus stands to prevent young couples from occupying public spaces and parks. The squads have been provided with ward-robe mounted cameras to ensure no one slips from police net. Though a much-publicised initiative for bringing about greater security for women, the squads are not backed by any legislation and in fact amount to vesting law enforcement authorities with extra-constitutional powers not suited to a democracy and more to a police state. Even with the operation of such squads to keep a check on instances of abuse against women, the latest National Crime Record Bureau data suggested that Uttar Pradesh reported the highest number of crime against women.

To cite some examples, such instances of giving excessive administrative power in the hands of the State has always had

catastrophic impacts on the personal space individuals have a right to enjoy.

16.1 That the Mumbai (Malwani) Police, in 2015, raided hotels in Madh and Marve and detained around 13 couples on August 6 for alleged indecent behaviour after knocking on hotel rooms and carting them away to Malvani police station. The raids were reportedly carried out following an “unverified” tip that “prostitution-like activities” were happening there. Consenting adults who checked into several hotels in Madh Island and Aksa area were harassed and humiliated by the Police. Later, the Joint Commissioner of Police (law and order) accepted that overzealous Police officers made a mistake by breaching their privacy. The true and correct copy of the article titled “Hotel raids: Made a mistake, cops were overzealous, admit Mumbai Police” dated 11.08.2015 published by The Indian Express is marked and annexed hereto as **ANNEXURE P-7.** (Page No. _136-141)

16.2 That in Chhattisgarh, similar groups in 2016, forced a couple to exchange garlands in a public place when they were seen roaming with each other on the streets. The outfit, in the name of moral policing, had also announced that couples who are seen loitering around “romancing” in the streets will be either forced to tie Rakhi or garland each other in a public place. Public thrashing and forcibly solemnising marriages is imposed on young men and women since they have been influenced by

the sinful Western culture. The true and correct copy of the article titled “Shiv Sena goons force couple to garland each other on Valentine’s day in Chhattisgarh” dated 15.01.2016 published by Times of India is marked and annexed hereto as **ANNEXURE P-8** . (Page No. _142-143

16.3 That in a tragic incident, a 23-year-old young man and a victim of moral policing was forced to end his life in Kerala when he was allegedly harassed and filmed for indulging in immoral behaviour. He and his woman friend were insulted and targeted by moral vigilantes near a beach in Kollam on February 14, 2017 and that he left a suicide note citing harassment. The true and correct copy of the article titled “Kerala Man, Filmed On Valentine's Day, Found Hanging” dated 24.02.2017 published by New Delhi Television is marked and annexed hereto as **ANNEXURE P-9** . (Page No. _144--145

16.4 That a young couple in Kolkata were beaten up and forced out of a packed Kolkata metro Railway coach for hugging. Fellow commuters were allowed to pass comments like the couple was “polluting the atmosphere” suggesting that they should go to a pub in Park Street instead. The true and correct copy of the article titled “Couple beaten up for hugging in Kolkata's Dum Dum metro station” dated 01.05.2018 published by The New Indian Express is marked and annexed hereto as **ANNEXURE P-10** (Page No. _146-151)

16.5. That a 39 year old man, Haider Ali was allegedly beaten up and tortured at the Kasya Police station after the Police stopped a wedding ceremony following a phone call claiming that a Muslim man was marrying a Hindu woman after converting here. In fact it was a case of same faith marriage. The incident like so many others reveals what can happen when the police are given extra-Constitutional powers. The true and correct copy of the article titled “ Love Jihad rumour: Wedding stopped in UP, Muslim couple kept overnight in police station” dated 11.12.2020 published in The Indian Express is marked and annexed hereto as **ANNEXURE P-11**. (Page No. _152-153)

17. That in several states of the country due to these developments that have in effect, over a period of time given extra-Constitutional powers to the police and non-state actors, the result has been that adult couples who broke caste and community barriers and used the Constitutional vision encompassed in the Special Marriages Act of 1954 to marry and co-habit, have often been targeted.

18. Among one such example, documented and investigated by authorities is that of one run by Babu Bajrangi and his Navchetan Sanstha, who in the name of social justice, has violated fundamental rights of the aggrieved people and created upheaval in the lives of innocent people. The police report prepared by Deputy Commissioner,

Harbour Area Office, Mumbai in 2006 submitted before the Police Commissioner noted that this Babu Bajrangi abducted girls by separating them out of marriages with other caste boys into his community. A true and correct copy of the inquiry report on Mumbai High Court Writ Petition No. 30713072/3073, 3074/2005 prepared by the Deputy Police Commissioner, the Harbour Area Office, Mumbai (O.W.No.059/DY.TC/BP/V/06) dated 15.04.2006 is marked and annexed hereto as **ANNEXURE P-12 (Page No_154-172.**

19. That this Love Jihad spectre also formed the bedrock for the build-up of to the full fledged communal riots in 2013 that ravaged the region of Muzaffarnagar, Uttar Pradesh resulting in 62 people dead and displacement of close to 50,000 innocent persons. Among the dead were persons belonging to both the Hindu and Muslim community. Several provocative slogans and around the issue of purportedly coercive conversions followed by marriage were used to justify communal violence that spread at the time to four districts in western Uttar Pradesh. The word Jihad in the Holy Quran, means striving and struggle in the way of God, and that now because of such planned narratives being spun through social media has projected 'Jihad' as mindless killing of non-Muslims. The word Love Jihad has come to be used to further demonize the Muslim community and the propaganda

has been that some Muslim organizations are funding Muslim youth, to lure the non-Muslim girls, to marry them and to increase the Muslim population. A true and correct copy of an article titled "The Muzaffarnagar Model" dated 05.09.2014 published by NDTV is marked and annexed hereto as **ANNEXURE P-13 (Page No__173-178)**.

20. That section 4 of the Act (Uttarakhand) states that any aggrieved person or his parents or brother-sister may complain to the Court of such conversion of religion on the ground that it would contravene of the conditions specified in section 3 of the Act that prohibits conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement or marriage; Section 4 of the Ordinance (Uttar Pradesh) provides who can register an FIR against an alleged accused in cases of forced conversions. As per Section 4, any aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage, or adoption may lodge an FIR of such conversion which contravenes the provisions of Section 3 (that stipulates what is prohibited). It is a known fact that inter faith couples have often faced harassment, torture, social ostracism at the hands of the merciless society, family members and in many instances' death, popularly known as 'Honour Killing.' These sections give arbitrary powers to people to bring in frivolous and false complaints implicating innocent people into an offence that is a cognisable and non bailable offence under section 7 of the Ordinance. On one FIR registration,

Police officials can arrest an alleged accused without a warrant and may or may not be released on bail. Such provisions will act as a legal cover and incentive for further honour crimes against men and women of Uttarakhand and Uttar Pradesh.

21. That this Hon'ble Court had taken a strict view against Honour Killings in *Lata Singh vs State of Uttar Pradesh and Ors*, (2006) 5 SCC 475, as under:

1. "This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum, they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law." (Emphasis provided)
2. "We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

II. Right to Freedom of Choice of Adults

22. That the Ordinance (Uttar Pradesh) is premised on conspiracy theories and assumes that all conversions are illegally forced upon individuals who may have attained the age of majority. If the conversion is not forced, a rigmarole of procedures have to be followed before and after conversion, taking the State into confidence that it was an informed and voluntary decision by the individual. It places a burden on individuals to justify the personal decisions taken by them for State approval and that is constitutionally repugnant and against a citizen's right to freely exercise his/her freedom of choice.

23. That in **Soni Gerry vs Gerry Douglas**, reported in (2018) 2 SCC 197, this Hon'ble Court has upheld the rights of adult citizens who are capable of making their own choices as under:

"It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The Courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

24. That the absolute liberty and freedom to choose is intrinsic to human existence. An individual, through this Ordinance, has to go through a cumbersome process and subject himself/herself to a District Magistrate and Police inquiry to exercise his/her independence. In **Shakti Vahini vs Union of India and Ors**, (2018) 7 SCC 192, this Hon'ble Court had said:

“Assertion of choice is an insegregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said: Liberty, taking the word in its concrete sense consists in the ability to choose.” When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large. The question that poignantly emanates for consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic ‘No’. It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour, howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. It is also necessary to state here that the old order has to give way to the new. Feudal perception has to melt into oblivion paving the smooth path for liberty.”

25. That this Hon'ble court has further emphasised in the case of *Shakti Vahini*, the true meaning of the choice of an individual which in inextricably linked with his/her own dignity as under:

“The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their appearance as if they are the monarchs of some

indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law."

26. That the Ordinance stands in the way and disregards the choice of individuals who have the full freedom to decide the course of their life, to choose a particular faith or marry a person from a particular faith or adopt the moral and ethical beliefs of a faith for personal reasons without mandatory State policing.

27. That this Hon'ble Court in *Lata Singh* (supra) has upheld an (adult) individual's choice to marry whoever he/she wants even if it is inter-caste or inter-religious marriage and further directs the police authorities to protect such inter-faith or inter-caste couples from being harassed by anyone and to institute criminal proceedings against such person(s). It appears that the impugned Ordinance and Act are contravening the precedent set and the directions issued by this Hon'ble Court by initiating criminal proceedings in cases of inter-religious marriages and prohibiting conversion by way of marriage.

28. An individual's freedom of choice includes an individuals' right to exercise his rights enshrined in the Constitution. The provisions of the impugned Ordinance and Act impinge upon an individual's right to freedom of choice, right to life and liberty as well as right to freedom of

religion. The impugned Ordinance and Act completely disregard an individual's freedom of choice and assume the doctrine of *parens patriae* by assuming that all religious conversions are somehow brought about by influence or coercion and criminalising conversion by reason of marriage. This can be inferred from plain reading of the ordinance and the Act since neither provide exceptions for voluntary conversions, rather impose unreasonable restrictions on a person's choice to convert by making a secular state a party to such personal choice, such as marriage and professing a religion.

29. In *Kesavananda Bharati and ors vs. State of Kerala and Anr* (1973 (3) SCC 225), while laying down the basic structure of the Constitution, this Hon'ble Court stated that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.

III. Right to Privacy

30. That Indian citizens enjoy the Right to Privacy as a fundamental right but the Act and the Ordinance (Uttarakhand and Uttar Pradesh) are unconstitutional as both attempt to govern the life of the residents of Uttarakhand and Uttar Pradesh and to not allow them to take charge of the significant decisions in their life. The Act and the Ordinance allows

unnecessary intrusion in the lives of people who have their autonomy compromised by the State. This Hon'ble Court in *KS Puttaswamy v Union of India* (2017 10 SCC 1), had laid down that privacy is an important facet of human dignity and that choosing a life partner is a matter of privacy. The relevant portions of the judgment are quoted hereunder:

322. *"Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy subserves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty."*

323. *"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being."*

31. That when the individuals have to approach the District Magistrate to validate their conversion for purpose of marriage or otherwise, it violates this very right to privacy and disempowers individuals. If the State needs to be satiated about a person's individual and personal choice of who or who shall be the partner, this state of affairs is not just unconstitutional, it leaves their right to privacy severely handicapped. To involve the police

to decipher the real intention, cause and purpose of the conversion forces an individual to reveal personal information about himself/herself further contravening the right to privacy in letter and spirit. That in essence, this Hon'ble Court had observed in *K.S Puttaswamy* that the right to be left alone is also fundamental to the right to privacy and to have to inform the State about family matters, violates the exercise of liberty. It further also holds that,

42. *“Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality.*

46. *“Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.”*

31.1 That the right to privacy is a natural inalienable right available to each and every citizen of the country and the disrespect of such rights renders human existence worthless and powerless. Involving the State in matters of following a path based on the tenets of a particular faith or religion that appeals to your conscience is an unreasonable interruption by the State. Privacy is an important condition precedent to the enjoyment of life. This Hon'ble Court held that:

“In the Indian context, a fundamental right to privacy would cover at least the following three aspects:

521. Privacy that involves the person i.e. when there is some invasion by the State of a person's rights relating to his physical body, such as the right to move freely; Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognises that an individual may have control over the dissemination of material that is personal to him. Unauthorised use of such information may, therefore lead to infringement of this right; and the privacy of choice, which protects an individual's autonomy over fundamental personal choices.”

31.2 That dissemination of personal information to the State impinges on an individual's right to exercise control over his/her life and to live a life sans mental pressures and take charge of fundamental personal choice of selecting a faith. That “Privacy is, therefore, necessary in both its mental and physical aspects as an enabler of guaranteed freedoms.” In K.S Puttaswamy (supra), the Hon'ble Court had also observed:

298. “....The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination.”

IV. Right to Conscience

32. That Article 25 of the Constitution provides every individual the 'freedom of conscience' and free profession, practice and propagation of

religion. The dictionary meaning of conscience states “a person’s moral sense of right and wrong, viewed as acting as a guide to one’s behaviour” and that a person’s moral sense of right and wrong can conform to a particular faith or not. This freedom of conscience would entail that one can be non-religious and exercise the right to conscience or be religious and exercise the same right.

33. That, the word ‘propagate’ was added to the Constitution after much debate on the desirability of such a clause; no less at the insistence of the Minorities Commission of the Constituent Assembly. The Constituent Assembly, in its debates on 3rd, 4th and 6th December focused, amongst other things, on the desirability of the right to propagate. The decision to include the term within the scope of the right to religion was on the basis of the fact that many religions, such as Christianity and Islam, are by nature proselytizing religions, and for that end, the right to propagate their faith was an essential feature of the religion. As a necessary corollary of the group right of a religion to propagate, an individual must have the right to convert to any religion other than his own. Hence, the right to convert oneself to another religion is manifested in Article 25 of the Constitution.

33.1 That it may be relevant to mention here a reference to the Constituent Assembly debates with relation to Article 25. The Petitioner submits that, In fact during the Constitutional Assembly debates there

were contested arguments along with an amendment being moved to drop the word propagate from the Article. However, a large number of members supported the inclusion of this word. In the words of

T.T. Krishnamachari, he said:

“It does not mean that the right to propagate ones religion is given to any particular community or people who follow any particular religion. It is precisely open to the Hindus and the Arya Samajists to carry out their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains, the Buddhists and to every other religionist so long as he does it subject to public order, morality and other conditions that have to be observed in any civilised Government. So it is not a question of taking away anybody’s rights.”

Pandit Laxmikant Maitra argued:

“If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms by the sword or by coercion. But why should obstacles stand in the way if by exposition, illustration or persuasion you could convey your own religious faith to others?”

K.M. Munshi went further and said that even if the word propagate was removed the fundamental right of freedom of speech and expression would allow religious communities to persuade other people to join their faith. The word propagate was retained in Article 25 of the Constitution. The Petitioner craves leave to rely on the original contentions before the Constituent Assembly in the course of hearing of the Petition.

34. That it is true, this Hon'ble Court in *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, said that the fundamental right to "propagate" religion does not include the right to convert a person to another religion and upheld the anti-conversion statutes enacted by the states of Orissa and Madhya Pradesh, restraining the freedom of conscience and the right to propagate religion. But this freedom of conscience guaranteed under Article 25 will be rendered hollow if each isolated act of religious conversion is seen as forced and illegal unless proven otherwise by a complex process involving the State.

35. That in *Rev Stanislaus* (supra), this Hon'ble Court interpreted religious conversion from the prism of maintenance of public order as Article 25(1) of the Constitution of India states, "*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 religion.*" That this Hon'ble Court observed:

"23. The Acts therefore clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.....Public order is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established."

"20. We have no doubt that it is in this sense. that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees

“freedom of conscience” to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.”

36. That although this Hon’ble Court was clear to uphold every citizen’s freedom of conscience against forceful conversions, it also infringes a person’s individual autonomy. To frame a personal matter of bodily and mental autonomy as that of public order, would make the right to liberty and dignity redundant. That if there are communal elements that oppose conversion from one faith to the other, the responsibility and duty of the State is to impose restrictions on those opposing voices rather than attempting to determine the ‘correct intentions’ and validity of someone’s belief. The states of Uttarakhand and Uttar Pradesh derive power from this impugned Act and Ordinance to impose restrictions on religious conversion that may appeal to some individual’s conscience, is a blatant violation of the said fundamental right.

37. That the impugned Ordinance and Act undermine and violate an individual’s freedom of choice, conscience and religion. An individual may as well choose to convert to another religion as he/she may be willing whether the reason is getting influenced on his/her own by reading scriptures or growing up in the community or out of love for

another person and a desire to convert to the religion of the spouse cannot be curbed or curtailed by the government.

38. That not even two weeks have passed since the promulgation of the Ordinance and the Uttar Pradesh Police intervened in a marriage ceremony between a 22-year-old Hindu Girl and 24-year-old Muslim boy that was about to take place in Lucknow with the consent of the couple and the family members with no evidence of coercion. The police reached the marriage site just as the final preparations were on, and said that the couple needs the District Magistrate's permission before going ahead. That the couple shall have to wait for another two months (60 days) before tying the knot since that is the required prescribed under sections 8 and 9 of the said Ordinance. By the time this petition has been filed, the number of such arrests is on the increase and on a daily basis, cases are being registered under the new law. The petitioners crave leave to place these instances before this Hon'ble Court during the hearing of the Petition. A true and correct copy of the article titled "Police Stop Inter-Faith Marriage in Lucknow, Despite Couple and Families' Consent" dated 04.12.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-14** (Page No. __179-184

39. That even though a Five-Member Bench of this Hon'ble Court in *Rev Stanislaus (supra)* upheld the validity of anti-conversion laws, it did not

explicitly bar a person to convert for the sake of marriage. Both the Act and the Ordinance prohibit religious conversion by marriage and hence cannot rely upon the Stainislaus judgment as the same was silent on inter-faith marriages which cannot be related to public order, as enumerated under Article 25 of the Constitution. This Hon'ble Court's decision in Rev Stainislaus bears no effect on inter faith couples who intend to marry and convert from one religion to the other on their own volition for whatever the reason may be. Specifically emphasising on the point of conversion for marriage, both the Act and the Ordinance prohibit religious conversion by marriage. Hence one cannot rely upon the Stainislaus judgment as the same was silent on inter-faith marriages. The idea of a particular individual converting for the sake of marriage on his/her own will is a matter of Personal Choice, Autonomy, Privacy, Conscience –all basic and Fundamental Rights under Articles 14, 15,16, 19, 21 and 25 of the Constitution, and cannot be merely related to 'disruption of public order, as enumerated under Article 25 of the Constitution'. The nature and tone of this Hon'ble Court's decision in Rev Stainislaus, focused only on "forced" conversions and not on the practice of conversion undertaken by a sound mind who has attained the age of majority. Also, section 8 of both the Ordinance and the Act envisages procedures of prior notice and intimation that needs to be given to the District Magistrate before exercising their freedom of choice to follow a particular faith. The impugned sections assume an absence

of exercise of rational choice, free will and autonomy and moreover are based on the assumptions that all conversions are forced and purposely imposed on an individual and hence requires strict state scrutiny. This pre-supposition itself is an assault on the basic premises of the Indian Constitution with its Fundamentals of Equality and Non-Discrimination apart from militating against its vision of a pluralistic society comprising different faith, belief and value systems. Besides, such pre-suppositions could unnecessarily lead to sensationalization by Government officials in the society and also subject individuals to impinging inquiry by agents of law enforcement and the state into matters and issues relating to freedoms, personal choice and autonomy. The provision mandates an advance notice to be given to the District Magistrate before the intended conversion, which is to be followed by a police enquiry into the circumstances of conversion. These provisions have the potential to give state sanction and administrative support to the societal hostilities which persons intending to have inter-faith marriages face. That involving citizens in these procedures disables them from exercising the essential attributes of Constitutional freedoms in the fullest sense.

39.1 A concern that has often been raised with respect to the validity of the impugned Act and Ordinance is the decision of this Hon'ble Court decided in favour of the constitutional validity of the Orissa and Madhya Pradesh anti conversion legislations. The Petitioner would like to humbly state that

(i) This Hon'ble Court while deliberating on legislative competence limited itself to examining Lists I and II and did not examine possible encroachments on List III;

(ii) Further, this Hon'ble Court did not examine all the aspects of the legislation including the violation of individuals right to privacy, autonomy, right to life, equal treatment and right to propagate, the effect on India's international obligations and secularism, unreasonableness or arbitrariness of the legislation; and,

39.2. The *Stainislaus* case examined the ambit of the constitutional protection of anti-conversion legislation. In that case, the Madhya Pradesh and the Orissa laws were challenged on the ground of violation of Art. 25. Both the legislations did not outlaw conversions per se, but targeted conversion by force, undue influence or inducement. The Acts had been challenged in the respective High Courts and the Orissa Act was struck down on the grounds of violation of Art. 25 and lack of legislative competence, whereas the Madhya Pradesh Act was upheld. In appeal before the Supreme Court, the legislations were upheld on the grounds that they were within the legislative competence of the state and not violative of Article 25. Thereafter other states like Gujarat and Tamil Nadu have passed similar laws that have not yet been appealed

before this Hon'ble Court. Petitioners crave leave to elaborate these aspects further.

History of State Anti-Conversion Legislations

39.3 The Orissa Government passed rules under the state law in 1989, amended these in 1999; even these were challenged on grounds of unconstitutionality but were upheld by the High Court. In 1978, the state of Arunachal Pradesh, in year 2000, state of Chhattisgarh, in the year 2002 state of Tamil Nadu, in the year 2003 state of Gujarat, in 2006 the state of Himachal Pradesh passed different versions of anti-conversion laws. The state of Rajasthan passed a similar law in 2006 but this is pending Presidential assent. The Gujarat's state anti-conversion law has been challenged in the Gujarat High Court where the matter is still pending. The legislative and judicial history of these may have some bearing on the matters herein which will be dealt with in detail by the Petitioner during the hearing of the Petition.

39.4 The crucial issue of agency, autonomy, freedom of choice, right to life, equality before the law and equal protection before the law of women, Dalits and Adivasis are all impacted here as is the right to privacy and the basic and fundamental structure of the Constitution.

39.5 The Petitioners would like to submit that while the initial laws required, at the highest, subsequent intimation of an act of conversion,

over the decades and more so in the last 15 years the changes have been drastic.

- (a) During the initial years, what was required was only subsequent intimation of conversion to the authorities, now not only is the intimation to authorities prior but there is also a requirement of prior permission and subsequent declaration with provision of public display of details and police enquiry. This by itself prevents people from exercising their freedom of conscience because of the fear of a purely private matter becoming a public spectacle and threats and violence by public vigilante groups coupled with apprehension of arrest, etc.
- (b) The earlier laws did not penalise the person who gets converted and only the convertor was penalised- now even the person getting converted is penalised. This is a direct attack on the recognised fundamental right of freedom of conscience;
- (c) The earlier laws did not exempt those who reverted back to the earlier religion or religion of ancestors but now that is made an exception;
- (d) While earlier there was no change in burden of proof, now the laws shift the burden on the convertor and converted person to prove that the conversion was without any fraud, coercion, undue influence, allurement, etc.

- (e) While earlier it was never mentioned that the offences were non bailable, now it is routinely provided that the offences are non bailable;
- (f) Earlier the definition of allurement was quite narrow- though still suspect, now any benefit given to the convertor- material or spiritual is treated as allurement
- (g) In earlier laws, the punishment was relatively mild, while now not only is the punishment higher but also there is a provision for minimum imprisonment;
- (h) Earlier even violation of the law did not lead to any impact on the conversion, now even not giving intimation renders the conversion invalid.
- (i) Earlier, the laws did not directly deal with marriage but now they not only deal directly with marriage and conversion but also prohibit all conversions on marriage.

39.6 As has been demonstrated earlier, the decision of the Supreme Court in *Stainislaus* has no real application in the present scenario. The issue of legislative competence has been examined only in the context of the conflict with the residuary power of the Union under Entry 97, List I. The possible conflict of the present legislation with Union legislation under List III also has to be examined to determine legislative competence.

39.7 On the question of legislative competence, the court was then of the opinion that since any attempt at conversion was likely to result in a breach of public order affecting the community at large, the State legislatures would have the competence to enact legislation which is likely to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.

39.8 The impugned Act and Ordinance have certain aspects which go beyond the limits of public order and affect the administration of the criminal justice system in the country. Thus, they also affect Entry 1, List III which covers "*Criminal law, including all matters included in the Indian Penal Code at the commencement of the Constitution but excluding offences against laws in respect of any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.*" This field is already occupied by the Indian Penal Code which provides the substantial framework of criminal law in the country. The present laws place conversion and attempt to convert the same footing, and the punishment is the same for both of them. Thus under Section 3 read with Section 4, any attempt would be punishable by a term of two to five years.

39.9 The Indian Penal Code has a detailed scheme for the punishment of “attempts” which matches the punishment for attempt with the gravity of the offence. Thus, an equal quantum of punishment for offences and attempts is contemplated only in exceptional cases relating to instances in which the offences relate to sedition, counterfeiting, dacoity, etc (For instance, see Sections 121, 124, 124 A, 125, 131, 213, 239, 240, 241, 250, 251, 385, 387, 389, 391). Other than this, there are specific offences which specifically provide for a separate punishment for attempts. (For instance, see Sections 307, 308, 309, 393, 398) In these cases, the punishment for attempt is not equated with the punishment for the actual commission of the crime, but is a fraction thereof. In addition, Section 511 is a residuary section which deals with the punishment for attempts in case where the attempts are not covered by the two earlier categories. This section also provides for a sentence which is less than the sentence for the actual commission of the offence.

Besides, for coercion and intimidation, the Indian Penal Code already provides for sections to prosecute such crimes.

40. That the Petitioner wants to bring to the notice of this Hon'ble Court that days before the Ordinance was approved by the State of Uttar Pradesh's cabinet on 24.11.2020 and received the assent of the Governor on 28.11.2020, the High Court of Allahabad had passed an order dated 11.11.2020 saying that the Right to choose a partner from

any faith and marrying him/her is intrinsic to Right to Life and Personal Liberty.

41. That in *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors*, Cri. Misc. W.P No. 11367 of 2020, the Division Bench of the Allahabad High Court held that its previous rulings stating that religious conversion per se for contracting a marriage was prohibited and said marriage has no sanctity in law are incorrect and did not lay down “good law.” That the judgment passed in *Salamat Ansari* has overturned the previous rulings of the same court of 2014 and 2020 where interfaith couples were not allowed to get protection from the Police as their marriage was held illegal. The important portions from the judgment are hereunder:

“Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals.”

“We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major individuals who out of their own free will are living together,”

“None of these judgments dealt with the issue of life and liberty of two matured individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live. We hold the judgments in Noor Jahan and Priyanshi as not laying good law.”

“Once the alleged conversion was under clout, the Constitutional Court was obliged to ascertain the wish and desire of the girls as they were above the age of 18 years. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown up individual but would also be a

threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India.”

“We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India.”

“Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India.”

V. Right against Discrimination

42. That Article 14 of the Constitution of India provides that every citizen is equal before the law and that everyone is subject to the same laws of justice. That, further, Article 15 and 16 enjoin on the State to treat all Citizens without Discrimination. That with the Act and Ordinance in place, only residents of Uttar Pradesh and Uttarakhand will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other. This is a discriminatory and arbitrary practice for every mature individual who would want to exercise his/her choice of conscience that will cease to exist given such laws in force. This Hon’ble Court in *Kesavananda Bharti (supra)*, had noted that equality of status

and opportunities have not been put in the Constitution merely for individual benefits but have been put there as a matter of public policy.

43. That illegal conversion under the Ordinance attracts a punishment of 1-5 years in prison under section 5. However, if the victim of the illegal conversion is a minor, a member of the Scheduled Castes or Scheduled Tribes or, a woman, the punishment is doubled or twice the punishment if it were against a woman at 2-10 years behind bars. In cases of inter-faith marriages, it is reportedly usually women who convert to men's religion and it is therefore the harsher punishment i.e. upto 10 years imprisonment which would be invoked in most cases. Further, the provision views all women including economically weak, marginalised, privileged women to be susceptible to illegal conversions.

44. That section 12 of the Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person. In criminal cases, the Burden of Proof is on the prosecution to prove the guilt whereas the accused is treated innocent until proven guilty. It is only under this Ordinance, all alleged accused will have to prove their innocence which is bleak as it is a non bailable offence and also under a circumstance where they are

pitched against hostile communities and family members who masquerade in the glory of protection of women. The complaints could be prosecuted at the mere *ipse dixit* of family members and any other third party without any evidence. This law will lead to a disproportionate consequence by terrorizing inter-faith couples and acting as a deterrent as under section 4, apart from an aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage, or adoption may lodge an FIR against illegal conversions. This can lead to grave misuse by the State and as the above historiography has shown, by favoured, non-State actors. Besides, by its very term and object, the Act and Ordinance both, turn specific and targeted eyes of suspicions on Muslims and Islam which is a sure fire recipe to engender suspicion, division and even hatred within Indian society militating against the Constitutional Vision, the Preamble and the Basic Structure Doctrine of the Indian Constitution.

45. That the Act and the Ordinance will further the harmful cause of stereotyping women and leave them with no agency of their body and mind. A stereotypical attitude of a particular sex shall not hold legitimate claims under the Constitution of India. This Hon'ble Court in *Indian Young Lawyers Association vs The State of Kerala*, (2019) 11 SCC, highlighted the need of equality between sexes, the importance of

human liberty in matters of faith, belief, expression and worship. This judgment also emphasised the importance of the secular framework of India which treats all religions on an even platform, allows individuals the liberty to believe or not to believe. The relevant portions of the judgment are quoted here:

“215. The content of morality is founded on the four precepts which emerge from the Preamble. The first among them is the need to ensure justice in its social, economic and political dimensions. The second is the postulate of individual liberty in matters of thought, expression, belief, faith and worship. The third is equality of status and opportunity amongst all citizens. The fourth is the sense of fraternity amongst all citizens which assures the dignity of human life. Added to these four precepts is the fundamental postulate of secularism which treats all religions on an even platform and allows to each individual the fullest liberty to believe or not to believe....The founding faith upon which the Constitution is based is the belief that it is in the dignity of each individual that the pursuit of happiness is founded. Individual dignity can be achieved only in a regime which recognises liberty as inhering in each individual as a natural right. Human dignity postulates an equality between persons. Equality necessarily is an equality between sexes and genders. Equality postulates a right to be free from discrimination and to have the protection of the law in the same manner as is available to every citizen. Equality above all is a protective shield against the arbitrariness of any form of authority. These founding principles must govern our constitutional notions of morality. Constitutional morality must have a value of permanence which is not subject to the fleeting fancies of every time and age. If the vision which the founders of the Constitution adopted has to survive, constitutional morality must have a content which is firmly rooted in the fundamental postulates of human liberty, equality, fraternity and dignity. These are the means to secure justice in all its dimensions to the individual citizen. Once these postulates are accepted, the necessary consequence is that the freedom of religion and,

likewise, the freedom to manage the affairs of a religious denomination is subject to and must yield to these fundamental notions of constitutional morality...."

"...While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail. These, above everything else, are matters on which the Constitution has willed that its values must reign supreme."

45.1 Unconstitutionality of laws which are based on gender stereotypes and which victimises women instead of empowering women was also discussed by this Hon'ble Court in the case of *Anuj Garg vs Hotel Association Of India & Ors* [(2008)3 SCC 1], wherein it was held,

"36. Women would be as vulnerable without state protection as by the loss of freedom because of impugned Act. The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society."

"46. It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects."

51. The Court's task is to determine whether the measures furthered by the State in form of legislative mandate, to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled gender norms such as autonomy, equality of opportunity, right to privacy et al. The bottom-line in this behalf would a functioning modern democratic society which ensures freedom to pursue varied opportunities and options without discriminating on the basis of sex, race, caste or any other like basis. In fine, there should be a reasonable relationship of proportionality between the means used and the aim pursued."

46. That Indian courts have reaffirmed the constitutional principles of dignity and equality that is intrinsic to the life of consenting adults, but the impugned Act and Ordinance turns its back on the Constitution. This sectarian law stands in the way of the secular principles, which is a unique stance of the Constitution of India, a gift to the rest of the world. In a secular multi faith democracy, a law that criminalises freedom of choice and transgresses on a person's dignity should have no place.

VI. Constitutional Obligations and Powers of Governors

47. That the Petitioners would like to point out that the impugned Act, the Uttarakhand Freedom of Religion Act, 2018 was tabled in the State Assembly on March 21, 2018, passed thereafter and received the Governor's assent on May 11, 2018 within two months. That in an even more hasty fashion, the impugned Ordinance the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 received the Governor's assent on November 28, 2020.

47.1 The Indian Constitution recognizes several situations in which it is necessary in the interests of federal polity for state legislation to have the prior or later approval of the President. (Articles 288(2), 304(b), 254(2), 360(4)(a)(ii))

47.2. Other than these specific instances, the Governor has been entrusted with a general discretionary power under Article 200 to reserve bills for the assent of the President. There are no specific constitutional guidelines for the exercise of this power other than the mandatory requirement under the Second Proviso to Article 200 that the Governor shall reserve a Bill which derogates from the powers of the High Courts. The Article reposed in the Governor an independent power, which is not subject to judicial scrutiny. Thus in *Hoechst Pharmaceuticals*, (1983) 4 SCC 45 at Pr. 86, the Supreme Court states that:

“In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts.”

[Also *Bharat Sevashram Sangh vs. State of Gujarat* (1986) 4 SCC 51 at Para 6]

47.3 In the exercise of this power, the Governor thus has to be guided by Constitutional principles. By this logic, an essential exercise of this power would be in protecting the interests of the federal structure. Along with the protecting the federal structure, the Governor is also responsible for upholding Constitutional principles. Thus, the Governor has to also examine the

legislation for possible impact on Constitutional provisions such as violation of the basic structure or of fundamental rights.

47.4 In conclusion, the Governor's power to reserve Bills for the consideration of the President has the following aspects:

- a. Mandatory exercise, such as under Second proviso to Article 200;
- b. In situations when the State Legislature does not have the competence to enact the statute; and
- c. A more general discretionary power to address issues of constitutional validity of the Bill herein Act or Ordinance.

47.5 Another issue which arises in the case of the Ordinance (Uttar Pradesh) is also whether the State was empowered in law to have enacted this law through an ordinance. The power to issue Ordinances is governed by Articles 123 (for the President of India) and 213 for the Governors. When the Assembly is not in session, the Governor has the power to issue Ordinance if he is satisfied that circumstances exist which render it necessary for him to take immediate action. So the first issue would be whether circumstances existed which rendered it necessary for the Governor to issue the Ordinance without awaiting Assembly Session. Factually, no such situation existed. There is no material

to show that the concept of the fictitious term 'love jihad' is widespread or has been increasing at a rapid rate for such an Ordinance. A Special Investigation Team of Kanpur had carried out a study in September, 2020 across all police Stations in the city which showed that there were 14 pending cases of interfaith marriages which had reached the police and out of these in 8 cases there was no case made out at all. In the balance 6 cases the investigation was still pending. This was the only concrete study. It is humbly submitted that this was not a fit case for an Ordinance to be issued.

VII. Secularism

48. That the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on the secular fabric that holds Indian democracy together. The Constitution scheme of secularism is not a negative concept of religious tolerance. It is a positive concept which envisages that the State should have equal respect for all religions and refrain from discriminating between religions. This was recognized in the case of *Bommai v. Union of India*, (1994) 3 SCC 1 in which Jeevan Reddy J. observes (SCC paras)

".. while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far

as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally.”

49. To underline the significance of secularism as a part of the basic structure the Court in *Bommai* (1994) also stated that

“Any step inconsistent with constitutional policy is, in plain word, unconstitutional”

50. That it is clear that through the laws, the states are actively intervening in a partisan manner to protect to facilitate state intervention in the right to change one's faith. The apparatus created is far reaching and punitive in its effect. The overall effect would be to harass all propagation activity and question any genuine conversion. The impugned laws are not a neutral measure to protect vulnerable sections, but an attempt to activate religious policing to harass and intimidate religious minorities and unreasonably intrude in their personal lives. In this light, this is contrary to the principle of secularism and thus violative of the basic structure of the Constitution.

VIII. Bhimrao Ramji Ambedkar's ideology

51. That historically speaking, BR Ambedkar was among the most erudite – in a long line of Social Reformers and thinkers like Savitribai Phule, Jyotiba Phule, Ishwarchand Vidyasagar and Ram Manohar Roy-- to raise issues against the Oppression of Caste Exclusion, the Caste

System itself and the liberation of women. His way of thinking about the caste and gender problems through the marital relations in a family was an idea unique to his observation. During the time of colonial period Babasaheb Ambedkar was in direct contact with the women sufferings of his own community and seen the realities of caste discrimination in day-to-day life as an insider belonging to the caste of untouchable community. He had made attempts to erase the stratification among the castes by promoting inter caste and inter community marriages, secularising the society we live in.

52. That the feminist in Ambedkar was visible in his seminal essay “Annihilation of Caste”, where he actually prescribed inter-caste marriage as the real remedy for the abolition of caste. Fusion of blood, he said, could alone create the feeling of being kith and kin and unless this feeling of kinship became paramount, the separatist feeling created by caste would not vanish. Dr Ambedkar had said that in a society which is torn asunder, marriage as a binding force becomes a matter of urgent necessity. The virulent times of today, thus, necessitate inter-caste and inter-faith marriage. While the law needs to play an enabling role in facilitating them, the law alone is not sufficient, as the small percentage of such marriages clearly indicate. It is time society and family blessed these marriages unequivocally and heralded a change that this country critically needs. Let secularism not be a mere Constitutional ideal; a plural, heterogeneous and tolerant India demands

secularism from every citizen. Laws which are anti-conversion are essentially crimes against women autonomy dictating terms on potential suitors from within the woman's community, caging her constitutional freedoms.

53. That Babasaheb Bhimrao Ambedkar's burning of Manusmriti, which yields enormous power over Indians, speaks volumes on his formulation of the intersectionality of gender and caste. He believed that the Manusmriti advises upper-caste men to guard their women closely so that no other man plants his seed in their wife/woman in order to ensure purity and continuity of caste. If this control over women is subverted, caste dies a quick death. Similar notions have been adopted by Governments while enforcing anti-conversion laws to stop women from exercising their right and clamping down on their liberty. The Petitioners crave leave to produce before the Court the full and true copy of the essay, *Anihilation of Caste* whenever necessary.

54. That criminalising every inter faith relationship until the State's blessings, and discouraging assertion of women voices is against the Constitutional vision that Babasaheb dreamt of. Interfaith marriages will soon be seen as conspiracy theories rather than personal matters of love and faith. The proviso to section 3 of the impugned Act and Ordinance classifies conversion to Hinduism as a return to one's original faith, the ordinance makes Hinduism the single authentic faith for all

Indians. In the same stroke, all other Indian religions get branded as products of force, fraud, coercion or seduction, in the present or in the past – hence illegitimate and deserving of annulment and punishment. The proviso to section 3 the Act reads:

“Provided that, if any person comes back to his ancestral religion, shall not be deemed conversion under this Act. The proviso to section 3 of the Ordinance reads:

“Provided that if any person reconverts to his/her immediate previous religion, the same shall not deemed to be a conversion under the Ordinance.”

IX. State incentives for inter-faith marriages

55. That both states, Uttar Pradesh and Uttarakhand have had state level schemes to incentivise inter-religious marriages within their states. The scheme in undivided Uttar Pradesh was introduced in 1976. The incentive then was Rs 10,000. In 2013, the incentive for inter-religious marriages was increased to Rs 50,000. The Intercaste and Interfaith Marriage Incentive Scheme was brought into effect in 1976 by the national integration department of the then Uttar Pradesh government. In order to avail the benefits under this scheme, an interfaith couple would have had to apply to the district magistrate within two years of the wedding and after verification, the couple is provided with a sum of money. In 2017 the Uttar Pradesh government brought out a rule that if

the interfaith couple converted after they got married, they would then lose the incentive. A Times Now report states that in 2019 “there were 11 beneficiaries from the scheme who got Rs 50,000 each, the *Times of India* said in a report. However, there have been no cases in 2020 and four applications that came in are still pending.” The report states that the state government of Uttar Pradesh is planning to roll back or terminate this scheme to align with its Ordinance that penalizes conversion by marriage. A true and correct copy of the report titled ‘After ‘love jihad’ law, Uttar Pradesh to now withdraw 4 decade-old incentive scheme for interfaith marriages’ dated 02.12.2020 published by Times Now is marked and annexed hereto as **ANNEXURE P-15** (Page No. _185-186 and another news report titled ‘Uttarakhand mulls ending Rs. 50, 000 monetary benefit for inter-faith marriages after ‘controversy’ dated 6.12.2020 is marked and annexed hereto as **ANNEXURE P-16** (Page No. _187-191_)

56. That initially the State of Uttarakhand decided to pay Rs 50,000 to inter-caste and inter-faith couples to encourage such alliances. That the amount being given jointly to such couples was increased from Rs 10,000 to Rs 50,000 in Uttarakhand in 2014 through an amendment in the Uttar Pradesh Antarjatiya/Antardharmik Vivah Protsahan Niyamawali, 1976 which had been adopted when Uttarakhand was carved out of Uttar Pradesh in 2000.

57. That, it is clear that the Uttar Pradesh and Uttarakhand governments have step by step eroded the scheme that was promoting a progressive society and one that would encourage a society that sees beyond a religious lens to imbibe and adopt principles of brotherhood, fraternity and secularism as embodied in the Constitution.

58. That some States are finally moving up the path of social reforms attempting to encourage the idea of a caste less society, one that Babasaheb envisaged to liberate men and women from the shackles of regressive notions and critical religious texts. The State of Maharashtra had planned to provide special concessions such as fee waiver to the children born out of inter caste and inter-religion marriages. In 2018, the Social Justice Minister of Maharashtra had said that the couples where spouses are from different religions or castes have to face various problems, including social boycott and the threat of honour killing and hence, besides other aspects, a law in place will focus on what kind of protection can be given to the couples who are facing such threat. Honour is in the attempt to achieve that glory by encouraging States to come up with incentives to encourage inter faith unions. The Act and the Ordinance aims to take ten steps backward against the spirit of national unity and fraternity. The Right to Love campaign run by Sushant Asha and Abhijit K in Maharashtra, both journalists cum social activists, helps inter religious couples facing opposition to avail protection by police, legal help to get marriage registered, counselling to deal with the mental

pressure and also in finding job opportunities. With such laws in place impinging on your free will and right to conscience, the significance of the work and efforts put in by such individuals becomes even more stark. A true and correct copy of the report titled “Maharashtra plans to bring law to encourage inter-caste, inter-religion marriages” dated 06.05.2018 published by The Indian Express is marked and annexed hereto as **ANNEXURE P-17** (Page No._192-195). A true and correct copy of the report titled “Right to Love campaign protecting Interfaith and Inter caste Couples in Rural Maharashtra” dated 24.11.2020 published by The News Click is marked and annexed hereto as **ANNEXURE P-18** (Page No.196-199.

59. That the Ordinance and the Act are in contravention to the progressive schemes that were a part of a common history shared by both states at one point which could contribute towards promoting religious harmony in the state.

X. Law Commission Reports on Religious Conversion

60. That the Petitioner relies on the 235th report of the Law Commission of India titled ‘Conversion/reconversion to another religion - mode of proof’ which states as follows:

4. The change from one religion to another is primarily the consequence of one’s conviction that the religion in which he was

born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness.

The report, while speaking of compulsory registration of marriages stated:

14...Conversion which is bereft of any particular formalities or religious rites, cannot be placed on the same pedestal as marriage which can be recognized in law only if customary rites and ceremonies are gone through.

60.1. A reference is made in the report to a previous report of the Law Commission, the 211th report which had recommended that non-registration of marriage and divorce should be made an offence and secondly that no judicial relief shall be granted if the concerned marriage or divorce is not duly registered under the proposed Act. Clearly, this recommendation has not been adopted by the legislature, which demonstrates the unwillingness of the Union government to criminalize a personal law. Similarly, making intimation of religious conversion

mandatory and prohibiting conversion by marriage is also against the Union's legislative will. A true and correct copy of the Law Commission 235th report titled 'Conversion/reconversion to another religion - mode of proof' dated 27.12.2010 is marked and annexed hereto as **ANNEXURE P-19** (Page No._200-221)

60.2. That Sri M.N. Rao, former Chief Justice of H.P. High Court in his article titled 'Freedom of Religion and Right to Conversion' (2003) PL WebJour 19 observed as follows:

"Right to conversion connotes individual right of a person to quit one religion and embrace another voluntarily. This kind of change from one religion to another religion must necessarily be in consequence of one's conviction that the religion in which he was born into has not measured up to his expectations, spiritual or rational. Sometimes it may also be the result of losing faith in one's own religion because of the rigidity of its tenets and practices. Sometimes one may even lose total faith in the very concept of the existence of God and turn to Atheism. A change of religion, a consequence of any of the above reasons, falls within the ambit of the "Right to Conversion"

That, it is this freedom of conscience and faith as well as possibility of losing faith in one's own religion that the Ordinance and Act disregard.

60.3. That National Family Health Survey 2015-16 data suggests that only 2.6% marriages in India are inter-religious marriages. With such a small data point, two states in the country are trying to reduce the meagre number even further. Laws are being brought in place for a

crime that has not shown incidence and is a mere conjecture and societal discourse augmented in only past few years. Instead of trying to curb the 2.6% inter-religious marriages, as we progress as a society, diversity and unity ought to be promoted and a society that is a milieu of all cultures in India ought to be encouraged. A true and correct copy of article titled 'Age, caste, job, education: What data on couples in India shows' dated 03.10.2018 published by Hindustan Times is marked and annexed hereto as **ANNEXURE P-20** (Page No_222-228)

XI. International law

61. That in International law, the standards for freedom of speech, expression, opinions, have been protected by relevant treaties for important causes of socio-cultural assimilation of a community and also facilitate large scale integration of minority communities. Article 16 of the Universal Declaration of Human Rights (UDHR) protect the rights of men and women who have the right to marry when they are legally able without limits due to race, nationality or religion. Families should be protected by the Government and the justice system. The Article states:

1. "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

61.1. That the State which is entrusted with the protection of its citizens is being given such liberty-destroying power that gives them the license to intrude dangerously into personal decisions like marriage choices with an intent to prove it fraudulent. Anti-conversion laws of Uttar Pradesh and Uttarakhand assume all conversions are forced and for the sake of marriage, hence must be annulled. Article 18 of UDHR protects the rights to freedom of religion or belief. Article 18 states:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

62. That such laws violate international clauses that seek to uphold a person’s right to choose a faith and practice it as their conscience allows. The Petitioner wants to stress how such legislations impose a forced collective identity on individuals. The liberty to choose one’s own spiritual path is enshrined in India’s Constitution. The state should have

no role on who a citizen chooses to love or which God she/he chooses to worship.

63. That the International Covenant on Civil and Political Rights also lays down significant clauses that safeguards a person's civil, political, economic, social and cultural rights. Article 18 lays down the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. The impugned legislations are reinforcing social asymmetries to further and also acting as a threat to the very existence of India's most robust cultural institution – marriage.

64. That at the United Nations General Assembly's 72nd Session an interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed was submitted which was titled 'Elimination of all forms of religious intolerance'. The report called anti-conversion laws to be "invasive manifestations of intolerance based on religion". The report further states that, "Anti-blasphemy, anti-apostasy and anti-conversion laws, some of which are falsely presented as "anti-incitement" legislation, often serve as platforms for enabling incitement to discrimination, hostility or violence against persons based on religion or belief. Such laws also frequently afford varying levels of protection to

different religions and are often applied in a discriminatory manner.” A true and correct copy of the report titled ‘Elimination of all forms of religious intolerance’ dated 28.08.2017 submitted at the United Nations General Assembly by the Special Rapporteur on freedom of religion or belief is marked and annexed hereto as **ANNEXURE P-21** (Page No. __229-252)

XII. Evolution of Rights in Constitutional Courts and Interpretation of Law and Legislation

65. Countries emerge and their Constitutional rights also evolve through a progression of tests, individual and collective rights, checks and balances, and interpretations in Constitutional Courts. These in turn emerge out of real life situations that test the concept of these rights and what they were meant to guarantee. Forty three years ago, in 1977 when the Supreme Court decided the Stainislaus matter, key Constitutional tools were not available. Many of these have evolved in India’s Constitutional Courts through jurisprudence, when individuals and communities tested constitutionality through an assertion of their rights. Interpretations of, for instance the Right to Life have since expanded and used to guarantee several aspects of life and dignity including the Right to Privacy, Asylum and Education:

1. In 1977, the challenge under Article 14- the equality and equal protection clause was available only on the test of reasonable classification (intelligible differentia) and nexus between classification and object of the law. For a legislation to be valid against a challenge under Article 14, there had to be a classification between those included and those excluded by the legislation, such classification had to be reasonable and such classification needed to have nexus with the object sought to be achieved.
2. Thus the only way to challenge a legislation under Article 14 was basically the hostile discrimination test. In recent times, however, the Supreme Court has also applied the 'manifest arbitrariness' test to strike down laws such as was done in *Shreya Singhal* (2015 5 SCC 1) and Triple talaq case (*Shayara Bano* 2017 9 SCC 1). This means that even if the classification is valid and has a nexus with the object sought to be achieved, a legislation can be struck down if it is manifestly arbitrary. It was held in *Shayara Bano's* case,

“101. ... The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that

arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

3. Now there is no controversy about right to privacy being a fundamental right coupled with the Supreme Court's observation in Puttaswamy's case as dealt with extensive in Paras 30-31 above that this right applies not only to spatial privacy but also relational privacy and the right to make personal choices.

Similarly In *Common Cause v. Union of India* (2018 5 SCC 1), a Constitutional Bench of the Supreme Court held:

“346. ... Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives.”

In *Navtej Singh Johar v. Union of India* (2018 10 SCC 1), the Supreme Court held:

“474. The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices.

“613. The choice of a partner, the desire for personal intimacy and the yearning to find love and fulfilment in human relationships have a universal appeal, straddling age and time. In protecting consensual intimacies, the Constitution adopts a simple principle: the State has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation.”

4. Earlier, the misuse or potential misuse of law was never a ground for striking down a law. Since the judgment in Navtej Singh Johar’s case there is some progress towards looking at the misuse and impact of the law. Besides, this Hon’ble Court has also observed that just because a legislation is facially neutral does not mean it is Constitutional. One has to look at the impact. Paras 13, 16 from Navtej Singh Johar’s case which equally apply in the present case, both in terms of misuse and in terms of likely impact.

There are enough examples to show that such anti conversion laws have been used to target marginalised minority communities and have never been used to stop ‘Ghar wapsi’ a euphemism for converting back to a religion.

65.1 Legislation Laws and sections of the law are increasingly assessed not just in the formal wordings but on the socio economic political context and the extent of arbitrary power it gives to the executive .Traditionally Constitutional Courts have largely held that potential misuse or even actual misuse of a law is not a ground to strike down a legislation. However in recent times there has

been a change- especially as was viewed in the Supreme Court judgment concerning decriminalising homosexuality where one of the grounds on which some of the judges held it to be unconstitutional was its effect and misuse.

The true and correct copy of the Himachal Pradesh Act titled The Himachal Pradesh Freedom of Religion Act, 2019 is marked and annexed hereto as **ANNEXURE P-22**. (Page Nos 253-258.

The true and correct copy of the Madhya Pradesh Ordinance titled The Madhya Pradesh Freedom of Religion Ordinance, 2020 is marked and annexed hereto as **ANNEXURE P-23**. (Page No. 259-263

The true and correct copy of the Himachal Pradesh Freedom of Religion Act, 2006 is marked and annexed hereto as **ANNEXURE P-24**. (Page No. 264-266 T he true and correct copy of the Judgment of the Himachal Pradesh High Court in *Evangelical Fellowship v. State of Himachal Pradesh*, 2012 SCC Online HP 5554, is marked and annexed hereto as **ANNEXURE P-25**. (Page No. 267-280)

In the facts and circumstances stated hereinabove, the Petitioner is filing the present petition on the following amongst other grounds which are set out without prejudice to each other:

GROUND

- A. Because the right to convert oneself to another religion is manifested in Article 25 of the Constitution and the impugned laws impinge upon this right by imposing unreasonable and discriminatory restrictions and hence are unconstitutional;
- B. The idea of a particular individual converting for the sake of marriage on his/her own will is a matter of Personal Choice, Autonomy, Privacy, Conscience –all basic and Fundamental Rights under Articles 14, 15, 16, 19, 21 and 25 of the Constitution, and cannot be merely related to ‘disruption of public order, as enumerated under Article 25 of the Constitution’.
- C. Because this Hon’ble Court has been laying down for decades including in *Kesavananda Bharati and ors vs. State of Kerala and Anr* (supra) , that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.
- D. Because this Hon’ble Court in the case of *Anuj Garg vs Hotel Association Of India & Ors* [(2008)3 SCC 1] has discussed the

unconstitutionality of laws which are based on gender stereotypes and which victimises women instead of empowering women. The Court in this case discusses the importance of autonomy of women and not crippling that under the garb of their protection. It was held,

“36. Women would be as vulnerable without state protection as by the loss of freedom because of impugned Act. The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society.”

- E. Because even while upholding state imposed restrictions on conversions, *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, this Hon'ble Court held that 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 religion.
- F. Because the impugned laws do not factor that in *Bommai v. Union of India*, (1994) 3 SCC 1, this Hon'ble Court held that while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally. Any step inconsistent with constitutional policy is, in plain word, unconstitutional.

G. Because in *Shafin Jahan vs Ashokan K.M.*, it was held that (2018 16 SCC 368), intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. It was held,

“The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation.”

H. Because in *Shakti Vahini vs Union of India and Ors* (supra), it was held by this Hon’ble Court that, *“Assertion of choice is an inseparable facet of liberty and dignity. this right of enjoyment of*

liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness."

While upholding "right to privacy", this Hon'ble Court *KS Puttaswamy v Union of India*, reported in (2017) 10 SCC 1 held that, "Privacy is the constitutional core of human dignity. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Personal choices governing a way of life are intrinsic to privacy. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action."

- I. Because in *Indian Young Lawyers Association vs The State of Kerala* (supra) it was held that "While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail"

J. That the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on the secular fabric that holds Indian democracy together. The Constitution scheme of secularism is not a negative concept of religious tolerance;

K. Because even the Law Commission of India in its 235th report titled 'Conversion/reconversion to another religion - mode of proof' which states as follows:

"4. The change from one religion to another is primarily the consequence of one's conviction that the religion in which he was born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness."

L. Because in *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors* (supra), it was held that, "Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to

life and personal liberty. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown-up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India.

- M. Because the impugned laws even otherwise are discriminatory and ultra vires the constitution as it equates “marriage” with other criminal acts like “force”, “coercion”, “fraudulent means”;
- N. Because by making no exception for cases registered under the Special Marriage Act, 1954, which is a central act, the impugned laws are hit by repugnancy and hence liable to be struck down;
- O. Because the impugned laws seek to shift the *burden of proof* on the *person accused of the crime thereby equating these acts, which are otherwise not criminal acts, to acts of terror*;

P. Because the legislators have failed to appreciate that interference by the State in personal matters protected by the Constitution has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty.

Q. Because the impugned laws ignore that principle upheld by this Hon'ble Court that *"Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. "Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation."*

R. Because the impugned laws ignore that as held by the Hon'ble High Court of Allahabad, *"Right to live with a person of his/her choice*

irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals.”

- S. Because the impugned laws fail to appreciate that the Constitution of India grants equality, liberty and freedom and as matters of right and these legislations encourage surveillance and grant unbridled powers to law enforcement;
- T. Because the Himachal Pradesh Act has re-enacted the struck-down provisions of the 2006 Act, and indeed has done so in a form which is even more obnoxious and unconstitutional than the provisions which were struck down by the Honourable High Court of Himachal Pradesh in *Evangelical Fellowship of India v. State of Himachal Pradesh* 2013 (4) RCR 283 (Civil); 2012 SCC Online HP 5554.
- U. Because this is a case of patent Legislative overreach and an attempt to legislatively overrule a binding declaration of law by the competent High Court, without in any manner removing the unconstitutionality pointed out by the High Court.
- V. Because the Himachal Pradesh Act was notified one month after the Uttar Pradesh Ordinance was promulgated and that it was not based

on any substantial statistics of alleged love jihad instances but just following suit as other States were anticipating enacting similar laws

W. Because in *Mr Wajeed Khan H B vs The Commissioner Of Police*

W.P.H.C No. 92 of 2020, the Karnataka High Court had held that adults can marry anybody of their choice and the impugned Acts and Ordinances stand in contravention of that very right by laying down unnecessary processes for someone marrying an individual from another religion as they have to profess their desire to do the same in comparison to couples belonging to the same faith. It was held:

4. "It is well settled that a right of any major individual to marry the person of his/her choice is a fundamental right enshrined in the Constitution of India and the said liberty relating to the personal relationships of two individuals cannot be encroached by anybody irrespective of caste or religion."

X. Because in *Evangelical Fellowship of India v. State of Himachal*

Pradesh 2013 (4) RCR 283 (Civil) the Himachal Pradesh High Court had held

7. "Conversions in our country are permissible if the conversion is by the free will of the converttee. We are also of the opinion that each and every citizen of this country has a right not only to follow his own beliefs but also has a right to change his beliefs."

The Hon'ble High Court also took note of *Rev Stanislaus vs Madhya*

Pradesh 1977 SCR (2) 611 and observed that while the court had

upheld the right to propagate a religion, in no uncertain terms did it hold that right to propagate one's own views does not give any person the right to convert anybody else except if the person converts

of his own free will. Because even as (Para 20) of *Evangelical* (supra) lays down that if a person changes his religion or belief of his own volition then the state has no role to play”, the Himachal Pradesh Act interferes in this personal space of an individual’s volition and mandates that a declaration be made to the administration to enquire into whether this conversion is being made voluntarily under section 7(3) of the impugned Himachal Pradesh Act.

- Y. Because the enforcement of the Madhya Pradesh Ordinance comes in the face of harassment of young vulnerable couples who are deprived of their right to marry any individual on their free will and the Madhya Pradesh Ordinance is modelled on the Uttar Pradesh Ordinance, Uttarakhand Act and the Himachal Pradesh Act that penalises conversion from one religion to another for marriage.
- Z. Because the Petitioner would like the liberty to delve deeper into the history of Love Jihad and how it has played over the years to divide the country with no official numbers or evidence of forced conversions and that the fears of rising ‘love jihad’ cases have been “baseless” from the very start. Even though the rhetoric of Love Jihad has been sold off quite often in India, especially starting from Kerala and Karnataka, the Government had admitted that the term ‘Love Jihad’ is not defined under the extant laws and no such case of ‘Love Jihad’ has been reported by any of the central agencies.

AA. Because there are various High Court judgments which reveal that no case of forced conversion is made out in most cases of inter-faith marriages which are often sensationalised. For instance, Kerala High Court held in *Anees Hameed v. State of Kerala* (2017) 4 KLJ 600 that:

10. "We are appalled to notice the recent trend in this State to sensationalize every case of inter-religious marriage as either 'Love Jihad' or 'Ghar Wapsi' even if there was platonic love between the spouses before. The case on hand is also projected as 'Love Jihad' by the parents of Sruthi whereas Anees alleges a case of 'Ghar Wapsi' in a bid to coerce her to come back to the Hindu religion. Any centre for forcible conversion or re- conversion has to be busted by the police whether it be Hindu, Muslim or Christian lest it offends the constitutional right."

Further, in *Sri C Selvaraj vs State of Karnataka* WPHC No. 158 of 2009, the Hon'ble High Court of Karnataka in 2013 recorded that there were no instances of Love Jihad and disposed the petition. It observed:

"Pursuant to the direction issued by this Court, status report is filed by the Police

2. According to the Learned Government Advocate, there are no incidents of Love Jihad in the State of Karnataka. He further submits that if any such incidents takes place in the State, Police would take appropriate action in accordance with law."

BB. Because provisions of the impugned Acts and Ordinances provide that complaints against unlawful conversion can be filed by an aggrieved person or his or her sibling, parents or anybody related by blood, marriage, adoption, custodianship or guardianship and this

essentially sanctions the opinions of the entire society into an individual's personal decision to choose a partner and live peacefully without public scrutiny. That this does not only violate people's privacy but also is an assault on the personal liberty and right to live with dignity.

CC. Because by the recent order dated 12.1.2021, in *Smt Safiya Sultana vs State of Uttar Pradesh and Ors* Hab. Corpus No. 16907 of 2020, the Allahabad High Court has ruled that the publication of notice of intended marriage under 6 of the Special Marriage Act is not mandatory and that it violates an individual's Right to Privacy. It was held:

45. *"The interpretation of Sections 6 and 7 read with Section 46 containing the procedure of publication of notice and inviting objections to the intended marriage in Act of 1954 thus has to be such that would uphold the fundamental rights and not violate the same. In case the same on their simplistic reading are held mandatory, as per the law declared today, they would invade in the fundamental rights of liberty and privacy, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned."*

Since the provisions of the impugned laws also place similar conditions of notifying the District Magistrate prior to conversion, it's a violation of a couple's or an individual's privacy and needs to be struck down immediately.

DD. Because the Uttar Pradesh State Law Commission published a report dated 21.11.2019 titled "Eight Report of VII State Law Commission on Freedom of Religion (Along with Draft Bill of) The

Uttar Pradesh Freedom of Religion Bill, 2019” to emphasise on the need to enact a new law to “curb and control the unlawful conversion.” Because it does not give any official data on the menace or reason behind the enactment of such an Act in Uttar Pradesh and stands against conversions as it is allegedly happening against a woman’s wish and that conversions affect public order and thus does not fall under the ambit of Article 25 that guarantees freedom of religion. This infantilises a woman’s capacity to make her own choice and gives priority to public and community interests more than a person’s fundamental right to choose his/her partner, autonomy, privacy, personal liberty etc. That this is the common mindset behind enacting the Uttarakhand Act, Himachal Pradesh Act and Madhya Pradesh Ordinance, in addition to the Uttar Pradesh Ordinance.

EE. Because the Act and Ordinance must be viewed in terms of their intent and impact and already these have been deleterious to individual freedoms in the concerned States.

FF. Because above all the above, both the Act and Ordinance are inherently anti women and discriminate against women, giving them no agency whatsoever and are therefore bad even on this count


In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Act - Uttarakhand Freedom of Religion Act, 2018 ultra vires of the Constitution of India;
- b) Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Ordinance - Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, ultra vires of the Constitution of India;
- c) Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Act - Himachal Pradesh Freedom of Religion Act, 2019 ultra vires of the Constitution of India;
- d) Issue a writ of mandamus or any other appropriate writ order or direction to declare the impugned Ordinance - Madhya Pradesh Freedom of Religion Ordinance, 2020-ultra vires of the Constitution of India;

e) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS
IN DUTY BOUND SHALL EVER PRAY.**

Filed by:



MS. TANIMA KISHORE

Advocate-on-Record for the Petitioner

Place: New Delhi

Filed on: 14.12.2020



The Uttarakhand Freedom of Religion Act, 2018
[Uttarakhand Act N0: 28 of 2018]

An
Act

to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters incidental thereto.

Be it enacted by the Uttarakhand Legislative Assembly in the Sixty-ninth year of the Republic of India, as follows:

Short title, extent and commencement	1.	<p>(1) This Act may be called the Uttarakhand Freedom of Religion Act, 2018.</p> <p>(2) It shall extend to the whole of the State of Uttarakhand.</p> <p>(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.</p>
Definitions	2	<p>In this Act, unless the context otherwise requires:</p> <p>(a) “Allurement” means and includes offer of any temptation in the form of any gift or gratification or material benefit, either in cash or kind or employment, free education in reputed school run by any religious body, easy money, better lifestyle, divine pleasure or otherwise;</p> <p>(b) “Convincing for conversion” means to make one person agree to renounce one’s religion and adopt another religion;</p> <p>(c) “Force” includes a show of force or a threat of injury of any kind to the person converted or sought to be converted or to any other person or property including a threat of divine displeasure or social excommunication;</p> <p>(d) “Fraudulent” includes misrepresentation of any kind or any other fraudulent contrivance;</p> <p>(e) “Coercion” means compelling an individual to act against his will by the use of psychological pressure or physical force causing bodily injury or threat thereof;</p> <p>(f) “Undue influence” means the unconscientious use by one person of his power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence.</p>

{the Uttarakhand Freedom of Religion Act, 2018}

		<p>(g) “Conversion” means renouncing one religion and adopting another ;</p> <p>(h) “Minor” means a person under eighteen years of age;</p> <p>(i) “Religion” means any organized system of faith, belief, worship or lifestyle, as prevailing in India or any part of it, and defined under any law or custom for the time being in force;</p> <p>(j) “Religious priest” means priest of any religion who performs purification Sanskar or conversion ceremony of any religion and by whatever name he is called such as <i>pujari, pandit, mulla, maulvi, father etc.</i>,</p> <p>(k) The words and expressions used in this Act and not defined in it but defined in any other law for the time being in force in India or in State of Uttarakhand shall have the same meaning assigned to them respectively.</p>
Prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement or marriage	3.	<p>No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage nor shall any person abet or conspire such conversion;</p> <p>Provided that, if any person comes back to his ancestral religion, shall not be deemed conversion under this Act.</p>
Complaint to of conversion religion	4.	<p>Any aggrieved person under section 3 or his parents or brother-sister may complaint to the Court of such conversion of religion on the ground that it would contravene of the conditions specified in section 3;</p> <p>Provided that, where aggrieved person or his brother or sister are under the age of eighteen years, or are idiot or lunatic, or are from sickness or infirmity unable to make a complaint some other person or by any other person who is related to him by blood, marriage or adoption, a complaint may be made on his behalf with the leave of the Court.</p>
Punishment for contravention of provisions of Section 3	5.	<p>Whoever contravenes the provisions of Section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which shall not be less than one year but which may extend to five years and shall also be liable to fine;</p> <p>Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.</p>

{the Uttarakhand Freedom of Religion Act, 2018}

Marriages done for sole purpose of conversion to be declared null and void	6.	Any marriage which was done for the sole purpose of conversion by the man of one religion with the woman of another religion either by converting himself before or after marriage or by converting the woman before or after marriage may be declared null and void by the Family Court or where Family Court is not established, the Court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage .
Court to which petition shall be presented	7.	Every petition under section 6 shall be presented to the Family Court or where Family Court is not established, the Court having jurisdiction to try such case within the local limits- (i) the marriage was solemnized; or (ii) the respondent, at the time of the presentation of the petition, resides; or (iii) the parties to the marriage last resided together; or (iv) in case the wife is the petitioner, where she is residing on the date of presentation of the petition.
Declaration before conversion of religion and pre-report about purification Sanskar	8.	<p>(1) One who desires to convert his religion, shall give a declaration at least one month in advance, in the prescribed proforma, to the District Magistrate or the Executive Magistrate specially authorized by District Magistrate that he wishes to convert his religion on his own and at his free consent and without any force, coercion, undue influence or allurement.</p> <p>(2) The religious priest, who performs purification Sanskar or conversion ceremony for converting any person of one religion to another religion, shall give one month's advance notice of such conversion, in the prescribed proforma, to the District Magistrate or any other officer appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed.</p> <p>(3) The District Magistrate, after receiving the information under sub-section (1) and (2), shall get an enquiry conducted through police, with regard to real intention, purpose and cause of that proposed religion conversion.</p> <p>(4) Contravention of the Sub-section (1) and/or sub-section (2) shall have the effect of rendering the said conversion, illegal and void.</p> <p>(5) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which shall not be less than three months, but may extend to one year and shall also be liable to fine.</p> <p>(6) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than six months, but may extend to two years and shall also be liable to fine.</p>

{the Uttarakhand Freedom of Religion Act, 2018}

Prosecution to be made with the prior sanction	9.	No prosecution for an offence under section 8 shall be instituted by any person except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate, as may be authorized by him in that behalf.
Punishment for violation of provisions of Act by an institution or organization	10.	If any institution or organization violates the provisions of this Act, the person or persons in charge of the affairs of the organization or institution, as the case may be, shall be subject to punishment as provided under section 5 and the registration of the organization or institution under any law for the time being in force may be cancelled after giving reasonable opportunity of hearing.
Prohibition on accepting donation or contribution	11.	Notwithstanding anything contained in any other law for the time being in force, no person or organization violating the provisions of this Act shall be allowed to accept any donation or contribution of any kind from within the country or abroad.
Parties to offence	12.	When an offence is committed under this Act, each of the following shall be deemed to have taken part in committing the offence and to be guilty of the offence, and shall be charged as if he has actually committed it, that is to say, - (i) Every person who actually does the act which constitutes the offence; (ii) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; (iii) Every person who aids or abets another person in committing the offence; (iv) Any person who counsels or procures any other person to commit the offence.
Burden of Proof	13.	The burden of prove as to whether a religious conversion was not effected through misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means or by marriage lies on the person so converted and, where such conversion has been facilitated by any person, on such other person.
Offences to be non bailable	14.	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence committed under this Act shall be non bailable.
Power to remove difficulties	15.	(1) If any difficulty arises in giving effect to the provisions of this Act, the Government of State of Uttarakhand may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it, to be necessary or expedient for removing the difficulty; Provided, that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be laid before State Legislature.

{the Uttarakhand Freedom of Religion Act, 2018}

Power to make Rules	16.	<p>(1) The State Government may, by notification in the Official Gazette, make Rules or Regulations for carrying out the provisions of this Act.</p> <p>(2) All Rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made, and shall be subject to such modifications, as the State Legislature may make, during the session.</p> <p>(3) Any modification so made under sub-section (2) shall be published in the Official Gazette, and shall thereupon take effect.</p>
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STATEMENT OF OBJECTS AND REASONS

1. Right to freedom of religion is guaranteed under Articles 25, 26, 27 and 28 of the Constitution of India, which provide religious freedom to all citizens of India. The objective of this right is to sustain the spirit of secularism in India. According to the Constitution, State has no religion and all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.
2. The Constitution confers on each individual the fundamental right to profess, practice and propagate his religion. However, the individual right to freedom of conscience and religion cannot be extended to construe a collective right to proselytize; for the right to religious freedom belongs equally to the person converting and the individual sought to be converted.
3. Still, there have been umpteen cases of religious conversions, both mass and individual. Obviously, such incidents have been hotly debated, more so in a multi-religious society, like ours. The presence of pseudo-social organizations with a hidden agenda to convert the vulnerable sections of other religions has been noticed. There have been instances when gullible people have been converted by offering allurements or under undue influence. Some have been forced to convert to other religions.
4. We have come across incidents in which with an agenda to increase strength of their own religion by getting people from other religions converted to their own religion, people do marry girls of other religion by misrepresentation of their own religion and after getting marriage to such girls, they get them converted to their own religion. Several instances came in notice that people convert themselves to the other religion only for the purpose of marriage with the girl of that -religion and after marriage they got that girl converted into their own religion. Recently Hon'ble Supreme Court also took judicial notice of such instances in the cases of SLP (Crl.) No.5777 of 2017 *Shafin Jahan v. Asokan K.M. & Ors.* and Writ Petition (Crl.) No.142 of 2016 *Aman Beg v. State of Madhya Pradesh & Ors.*
5. Several States in India already have their own Right to Freedom of Religion Acts such as Orissa, Madhya Pradesh, Chattisgarh, Rajasthan, Himachal Pradesh, Gujarat, Arunachal Pradesh and Tamil Nadu and recently Uttarakhand High Court in the case of HABC No.20 of 2017 *Girish Kumar Sharma v. State of Uttarakhand* also emphasized need for Freedom of Religion Act for the State of Uttarakhand to curb sham practices of conversion only for the purpose of marriage. Such incidents not only infringe the freedom of religion of the persons so converted but also militate against the secular fabric of our society.
6. The bill therefore, seeks to:-
 - (i) Prohibit religious conversions which are effected through misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means or by marriage by making it an offence;
 - (ii) Provide greater punishment for such conversion in respect of the Minor, Women, Scheduled Castes or the Scheduled Tribes;

- (iii) Provide that the onus of proof that the conversion was not effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage lies on the person converting them and the person converted; and
- (iv) Provide that every individual converting from one religion to another shall submit to the prescribed authority a declaration that the conversion was not effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and such authority shall make an inquiry in such cases;
- (v) Declare marriages null and void, which were done solely for the purpose of conversion of girls from one religion to another religion, on the complaint of girl or her parents.

7. The Bill seeks to achieve the above objectives.



ANNEXURE –P-2

No. 2069/LXXIX-V-I-2020-2(ka)-22-2020

Dated Lucknow, November 27, 2020

IN pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Vidhi Virudh Dharma Samparivartan Pratishedh Adhyadesh, 2020 (Uttar Pradesh Adhyadesh Sankhya 21 of 2020) promulgated by the Governor. The Grih (Police) Anubhag-9 is administratively concerned with the said Ordinance.

THE UTTAR PRADESH PROHIBITION OF UNLAWFUL CONVERSION OF RELIGION
ORDINANCE, 2020

(U.P. ORDINANC NO. 21 OF 2020)

[Promulgated by the Governor in the Seventy First Year of the Republic of India]

AN

ORDINANCE

to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters connected therewith or incidental thereto.

WHEREAS the State Legislature is not in session and the Governor is satisfied that circumstances exist which render it necessary for him/her to take immediate action.

Now, THEREFORE in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor is pleased to promulgate the following Ordinance:-

Short title, extent and commencement

1. (1) This Ordinance may be called the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020.
- (2) It shall extend to whole of Uttar Pradesh.
- (3) It shall come into force at once.

Definitions

2. In this Ordinance, unless the context otherwise requires,-

- (a) "Allurement" means and includes offer of any temptation in the form of –
 - (i) any gift, gratification, easy money or material benefit either in cash or kind;
 - (ii) employment, free education in reputed school run by any religious body, or
 - (iii) better lifestyle, divine displeasure or otherwise;
- (b) "**Coercion**" means compelling an individual to act against his / her will by the use of psychological pressure or physical force causing bodily injury or threat thereof;
- (c) "**Conversion**" means renouncing one's own religion and adopting another religion;
- (d) "**Force**" includes a show of force or a threat of injury of any kind to the person converted or sought to be converted or to any other person or property
- (e) "**Fraudulent means**" includes impersonation of any kind, impersonation by false name, surname, religious symbol or otherwise:
- (f) "**Mass Conversion**" means where two or more persons are converted;
- (g) "**Minor**" means a person under eighteen years of age;
- (h) "**Religion**" means any organized system of worship pattern, faith, belief, worship or lifestyle, as prevailing in India or any part of it, and defined under any law or custom for the time being in force:
- (i) "**Religion Convertor**" means person of any religion who performs any act of conversion from one religion to another religion and by whatever name he is called such as Father, Karmkandi, Maulvi or Mulla etc.
- (j) "**Undue influence**" means the unconscientious use by one person of his/her power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence.
- (k) "**Unlawful Conversion**" means any conversion not in accordance with law of the land.

Prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement or marriage

Person competent to lodge First Information Report

Punishment for contravention of provisions of section 3

3. No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage nor shall any person abet, convince or conspire such conversion:

Provided that, if any person reconverts to his/her immediate previous religion, the same shall not be deemed to be a conversion under this Ordinance.

4. Any aggrieved person, his / her parents, brother, sister, or any other person who is related to him / her by blood, marriage or adoption may lodge a First Information Report of such conversion which contravenes the provision of section 3.

5. (1) Whoever contravenes the provisions of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which shall not be less than one year but which may extend to five years and shall also be liable to fine which shall not be less than rupees fifteen thousand

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which shall not be less than two years but which may extend to ten years and shall also be liable to fine which shall be not less than rupees twenty five thousand;

Provided further that whoever contravenes the provisions of section 3 in respect of mass conversion shall be punished with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than rupees fifty thousand.

(2) The Court shall also grant appropriate compensation payable by the accused to victim of said conversion which may extend maximum to rupees five lakh and shall be in addition to fine.

(3) Whoever having been previously convicted of an offence under this Ordinance is again convicted of an offence punishable under this Ordinance, shall be liable for every such subsequent offence to punishment not exceeding double the punishment provided therefor under this Ordinance.

Marriage done for sole purpose of Unlawful Conversion or *vice-versa* to be declared void

6. Any marriage which was done for the sole purpose of unlawful conversion or *vice-versa* by the man of one religion with the woman of another religion, either by

converting himself/herself before or after marriage, or by converting the woman before or after marriage, shall be declared void by the Family Court or where Family Court is not established, the Court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage:

Provided that all the provisions of section 8 and 9 shall apply for such marriages to be solemnized.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all the offences under this Ordinance shall be Cognizable and non-bailable and triable by the Court of Sessions.

8. (1) One who desires to convert his/her religion, shall give a declaration in the form prescribed in Schedule-I at least sixty days in advance, to the District Magistrate or the Additional District Magistrate specially authorized by District Magistrate, that he wishes to convert his/her religion on his/her own and with his/her free consent and without any force, coercion, undue influence or allurement.

(2) The religious convertor, who performs conversion ceremony for converting any person of one religion to another religion, shall give one month's advance notice in the form prescribed in Schedule-II of such conversion, to the District Magistrate or any other officer not below the rank of Additional District Magistrate appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed.

(3) The District Magistrate, after receiving the information under sub-sections (1) and (2), shall get an enquiry conducted through police with regard to real intention, purpose and cause of the proposed religious conversion.

(4) Contravention of sub-section (1) and/or sub-section (2) shall have the effect of rendering the proposed conversion, illegal and void.

(5) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which shall not be less than six months, but may extend to three years and shall also be liable to fine which shall not be less than rupees ten thousand.

(6) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than one year, but may extend to five years and shall also be liable to fine which shall not be less than rupees twenty five thousand.

9. (1) The converted person shall send declaration in the form prescribed in Schedule-III within sixty days of the date of conversion, to the District Magistrate of the District in which converted person resides ordinarily.

(2) The District Magistrate shall exhibit a copy of the declaration on the notice board of the office till the date of confirmation.

(3) The said declaration shall contain the requisite details, i.e., the particulars of the convert such as date of birth, permanent address, and the present place of residence, father's/husband's name, the religion to which the convert originally belonged and the religion to which he has converted, the date and place of conversion and nature of process gone through for conversion.

(4) The converted individual shall appear before the District Magistrate within 21 days from the date of sending/filing the declaration to establish her/his identity and confirm the contents of the declaration.

(5) The District Magistrate shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objections are notified, he may simply record them, i.e., the name and particulars of objectors and the nature of objection.

(6) Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the parties, who gave the declaration to his/her authorized legal representative on his/her request.

(7) The contravention of sub-sections (1) to (4) shall have the effect of rendering the said conversion illegal and void.

10) (1) If any institution or organization violates the provisions of this Ordinance, the person or persons in charge of the affairs of the organization or the institution, as the case may be, shall be subject to punishment as provided under section 5 and the registration of the organization or the institution under any law for the time being in force may be cancelled by competent authority upon reference made by District Magistrate in this regard.

(2) State Government shall not provide any financial aid or grant to such institution or organization violating the provisions of this Ordinance.

11. When an offence is committed under this Ordinance, each of the following shall be deemed to have taken part in committing the offence and shall be guilty of the offence, and shall be charged as if he has actually committed the said offence, that is to say,

(i) every person who actually does the act which constitutes the offence;

(ii) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(iii) every person who aids or abets another person in committing the offence;

(iv) any person who counsels, convinces or procures any other person to commit the offence.

12. The burden of proof as to whether a religious conversion was act effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person.

13. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as apper to it, to be necessary: of expedient for removing the difficulty.

Provided that no such order shall be made after two years from the date of commencement of this Ordinance

(2) Every order made under this section shall, as soon as may be after it is made, be laid before both the Houses of State Legislature.

14. The State Government may, by notification in the *Official Gazette*, make rules for carrying out the provisions of this Ordinance.

SCHEDULE -I

Form of Declaration [see sub-section (1) of section 8]

Intimation regarding intended conversion from one religion to another

To,

The District Magistrate
District.....
Uttar Pradesh

Sir,

I.....s/o, d/o.....r/o.....intend to perform necessary ceremony for conversion from.....religion to.....religion, do hereby, give intimation of intended conversion as required by sub-section (1) of section 8:

1. Name of the person to be converted.....
2. Name of the:
 - (a) Father of the person to be converted.....
 - (b) Mother of the person to be converted.....
3. Address of the person to be converted.....

House No.....Ward No.....Mohalla.....
 Village.....Tahsil.....District.....

4. Age.....(DOB)
- 5.. Sex.....
6. Occupation and monthly income.....
7. Whether married or unmarrieid.....
8. Name of persons, if any, dependent upon the person to be converted.....
9. If any minor, name and full address of the guardian, if any.....
10. Whether belong to Schedule Caste or Schedule Tribe and if so, particulars of such caste.....
11. Name of the place where the conversion ceremony is intended to take place with full details.

House No.....Ward No.....Mohalla.....
 Village.....Districts.....

12. Date of Conversion.....
13. Religious priest:
 - (i) Name, qualification and experience.....
 - (ii) Address.....

VERIFICATION

I,.....do hereby declare that the information stated above is true to the best of my knowledge and belief and nothing has been concealed.

Signature.....
 Date.....
 Place.....

SCHEDULE-II

Form of notice (see sub-section (2) of section 8)

Notice by the religious priest regarding intended conversion from one religion to another

To,

The District Magistrate
District.....
Uttar Pradesh

Sir,

I.....s/o. d/o.....r/o.....do
hereby, give notice as required by Sub-section (2) of section 8 for intended conversion
from.....religion to.....religion and particulars of
aforesaid intended conversion are as below:

1. Name of the person to be converted.....

2. Name of the:

(a) Father of the person to be converted.....

(b) Mother of the person to be converted.....

3. Address of the person to be converted

House No.....Ward No.....Mohalla.....
Village.....Tahsil.....District.....

4. Age.....(DOB)

5.. Sex.....

6. Occupation and monthly income.....

7. Whether married or unmarried.....

8. Name of persons, if any, dependent upon the person to be converted.....

9. If any minor, name and full address of the guardian, if any.....

10. Whether belong to Schedule Caste or Schedule Tribe and if so, particulars of such
caste.....

11. Name of the place where the conversion ceremony is intended to take place with full
details.

House No.....Ward No.....Mohalla.....
Village.....Districts.....

12. Date of Conversion.....

13. Religious priest:

- (i) Name, qualification and experience.....
- (ii) Address.....

VERIFICATION

I,.....do hereby declare that the information stated above is true to the best of my knowledge and belief and nothing has been concealed.

Signature.....

Date.....

Place.....

SCHEDULE-III

Form of Declaration (see section 9)

Intimation regarding conversion from one religion to another

To,

The District Magistrate
District.....
Uttar Pradesh

Sir,

I.....s/o.
d/o.....r/o.....having performed the necessary ceremony for
conversion from.....religion to.....religion, do hereby, give
intimation of the conversion as required by Section 9 as under:

1. Full Name of the person converted:

(1) before conversion.....

(2) after conversion(if the name is changed).....

2. Name of the:

(a) Father of the person converted.....

(b) Mother of the person converted.....

3. Address of the person to be converted

House No.....Ward No.....Mohalla.....

Village.....Tahsil.....District.....

4. Age.....(DOB)

5.. Sex.....

6. Occupation and monthly income.....

7. Whether married or unmarried.....

8. Name of persons, if any, dependent upon the person to be converted.....

9. If any minor, name and full address of the guardian, if any.....

10. Whether belong to Schedule Caste or Schedule Tribe and if so, particulars of such caste.....

11. Name of the place where the conversion ceremony has take place with full details.

House No.....Ward No.....Mohalla.....

Village.....Districts.....

12. Date of Conversion.....

13. Religious priest:

(i) Name, qualification and experience.....

(ii) Address.....

14. Names, address and other particulars (relationship with the person converted, if any) of at least two persons other than religious priest who had taken part in the conversion ceremony:

(1).....

(2).....

VERIFICATION

I,.....do hereby declare that the information stated above is true to the best of my knowledge and belief nothing has been concealed.

Signature.....

Witness (1).....

Witness (2).....

Date.....

Place.....

ANANDIBEN PATEL,
Governor
Uttar Pradesh

By order,
ATUL SRIVASTAVA,
Pramukh Sachiv



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The long read

'Love jihad' in India and one man's quest to prevent it

Vijaykant Chauhan believes that, all over India, gangs of Muslims are seducing Hindu women and forcing them to convert to Islam - and he's made it his mission to stop them.

Aman Sethi reports on India's rising religious tensions

Aman Sethi

Thu 29 Jan 2015 01:00 EST



1,050 374

very few days, Vijaykant Chauhan WhatsApps me a photograph of himself. The photographs are invariably scenes of crowds gathered on a north [India](#) street corner.

E Chauhan is right in front: a thickset, mustachioed man in his late 30s, in faux-army fatigues, a camouflage-print baseball cap and sunglasses. He stands with his fists tightly bunched, arms upraised. Occasionally the police make an appearance – their faces creased by patient smiles, their hands held close to their chests, palms facing outwards, in gestures of pacification.

These are photographs of protests, celebrations, rallies and, most often, “cultural programmes”: neighbourhood events usually organised under the patronage of the local political representative to promote good values in society. Onlookers peer out from the margins, their faces inscrutable amid all the posing and scuffling, shouting and jostling.

Last week, I received a photograph of Chauhan posed beside a scooter laden with slabs of raw meat.

“What’s up, Chauhan-ji?” I asked, when I called him up that afternoon. “Why is a crowd gathered around a hunk of meat?”

“ Anyone who attacks the four pillars of Hindustan deserves to be put to death

“We found that meat secreted under the scooter’s seat,” Chauhan said. “Proof that cow flesh is still freely traded in these parts.” Beef, Chauhan reminded me, was an affront to Hindus. “Our strength, Aman-ji, comes from four pillars: our cows, our temples, our ancient culture and our girls. Anyone who attacks any one of these pillars should be put to death.”

I chanced upon Chauhan while on assignment for my newspaper, the Business Standard, in Saharanpur, a trading town in western Uttar Pradesh. In the summer of 2014, the Hindu nationalist Bharatiya Janata party (BJP) and its controversial leader, [Narendra Modi](#), had [swept the general elections](#) in a campaign that addressed the two presumed weaknesses of the ruling Indian National Congress – the faltering national economy, and the Congress’s alleged appeasement of minorities in the garb of secularism.

All summer long, Modi had dismissed accusations of orchestrating a [communal riot](#) that left more than a thousand dead in his home state of Gujarat in 2002. He said he was saddened by the loss of life, in the manner of a passenger involved in a traffic accident. “Someone else is driving a car and we’re sitting behind,” he said. “Even then if a puppy comes under the wheel, will it be painful or not? Of course it is.” He deflected attention away from the topic with rousing speeches about the need for jobs, progress and

development. In the meantime, his lieutenants reached out to men like Chauhan to stage rallies, mobilise crowds and organise cultural events to consolidate the diverse Hindu spectrum against their Muslim neighbours.

If Uttar Pradesh were a country, it would be the fifth most populous in the world. China, India, the US, Indonesia and then Uttar Pradesh, on a par with Brazil and some way above Pakistan, Russia and Japan. More than 200 million people live here, a fifth of whom are Muslim. The rest are mostly Hindu, and divided broadly between three mutually antagonistic caste groups: the upper-caste Brahmins and Thakurs; the lower-caste Dalits; and the “other backward classes” such as the Yadavs. While castes were once divided by hereditary occupations such as priests, warriors, traders, animal herders and manual scavengers, years of lower-caste political mobilisation and emancipation have blurred these hierarchies.

For the last two decades, Uttar Pradesh’s regional parties have formed state governments by promising state patronage to unusual social coalitions. As a primarily upper-caste Hindu party, the BJP has historically struggled to build broad alliances in Uttar Pradesh, but in 2014 the party saw an opportunity. In 2013, another communal riot had caused an outbreak of violence throughout the region, and the ruling Samajwadi party had failed to contain it. Most accounts suggest the state administration played one community against the other - leaving the Hindus alienated and the Muslims fearful.





COVER STORY

‘ Allegations of forced inter-religious marriages and conversions are entirely baseless in most cases’

Teesta Setalvad interviewed Gujarat’s director general of police, C.P. Singh in Ahmedabad, telephonically from Mumbai on October 6

Who in your opinion was responsible for the disturbing spate of attacks on minorities — Christians and Muslims — in Gujarat since February this year?

It is individuals not organisations that can be arrested and nailed. But one thing was clear in the pattern of incidents. It was the activists of the Vishwa Hindu Parishad and Bajrang Dal activists who were taking law into their own hands which posed a serious danger to peace in Gujarat.

Many of the attacks on the minorities were after these organisations had whipped up local passions on mere allegations of conversions (by Christian missionaries) and allegedly forced inter-religious marriages, where again conversion was supposed to be the alleged motive.

What has been finding of police investigations?

Our investigations revealed that in most cases these were entirely baseless allegations. A lot of hue and cry was raised about forced marriages but most of the incidents highlighted by the media were found incorrect. Take, for instance, the incidents at Randhikpur town in Panchmahal district where two women were allegedly kidnapped by Muslim youths and terror unleashed on Muslims of the village by the VHP and Bajrang Dal workers. Investigations have revealed that the women had eloped with these youths of their own volition and one of them had already married her lover.

Incidents cases of forcible marriages were reported by the media in earlier years, too. Then, too, investigations showed the reports to be baseless.

How is the situation in Gujarat now?

Over the past six weeks or so, attacks have stopped completely. Most importantly, criminal cases have been lodged against offenders for each and every incident. There has been no fresh incident.

Some say the dramatic improvement in the situation has to do with your no nonsense stand and publicly identifying the assailants as belonging to the VHP and the BJP. Comment?

Such an inference can be drawn.

What action, if any, has been taken against those inciting people to violence through inflammatory pamphlets and fiery speeches?

Unfortunately, we are talking at long distance, so it is difficult to provide a detailed list regarding these cases spread all over Gujarat. But I can say with reasonable confidence that all necessary legal steps have now been taken by the police in each of these cases. These include launching cases under sections 153a and 153b of the Indian Penal Code for incitement to violence.

Do you seriously expect the BJP government in the state to allow these investigations to proceed without interference? Local reports say the offenders acted with impunity boasting, "it is now our government both in Gujarat and in New Delhi"?

My job is to see that investigations are launched and carried out. So far this has happened. It is not for me to speculate about what will happen in future.

Have you not faced any pressure from the political bosses in the state?

I have faced no such pressure.

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REPORTAGE COMMUNALISM

Exclusive: UP Police Report Contradicts Adityanath Claim of 'Rise in Love Jihad'

Eight of 14 interfaith romance cases probed turned out to be consensual, while six cases in which the police claim deception or coercion are still being pursued.



**Ismat Ara**

COMMUNALISM GOVERNMENT WOMEN 23 HOURS AGO

Lucknow: Contrary to the polarising campaign carried out in the name of ‘love jihad’ by the Uttar Pradesh government and chief minister Yogi Adityanath, a ‘special investigation’ launched by the UP Police into allegations of allurement and forced conversion of Hindu women has turned out to be a damp squib. The official report – submitted to Kanpur inspector general of police Mohit Agarwal on Saturday – has concluded that the majority of Hindu-Muslim romance cases probed were consensual.

All 22 police stations in Kanpur city were asked to report suspicious instances of Hindu-Muslim romance but only 14 cases eventually emerged, which the special investigation team probed.

The SIT’s report, which *The Wire* has accessed, concludes that in eight of the 14 cases, the Hindu women had either married Muslim men or been with them of their own free will. In six cases, the FIRs registered are still being investigated, though in one of those cases the accused Muslim man has been released on bail, presumably because of lack of evidence.

In a country where daughters who marry men against their parents' will – even of their own religion – are often pressured to return home and file cases of kidnapping or harassment against their husbands, the SIT's failure to establish a compelling and exclusive pattern of 'Muslim coercion' is a setback for the politicians who had ordered the 'love jihad' investigation.

'Love jihad' is the term invented by Hindutva groups to describe an imaginary conspiracy in which Muslim men seduce Hindu women with a view to converting them and eventually turning Hindus into a minority in India. In recent months, the term has been aggressively deployed by the Bharatiya Janata Party and its affiliated organisations across the country,

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Also read: The History of 'Love Jihad': How Sangh Parivar Spread a Dangerous, Imaginary Idea



While the chief ministers of Karnataka, Haryana, Madhya Pradesh and Uttar Pradesh have promised to bring laws to combat this supposed conspiracy, Adityanath has been one of the most vocal BJP voices against 'love jihad'. At an election rally in Jaunpur recently, **he threatened death** for the young men "who play with the honour of our sisters and daughters".

However, a top police official in UP who spoke to *The Wire* this week on the condition of anonymity, acknowledged that the 'love jihad' phenomenon in the state has been hugely exaggerated.

What the police probe found

In September, the eight-member Kanpur Police SIT probed 14 cases in which Muslim men allegedly married Hindu women and forcibly converted them or had developed 'love relations' by deception.

The SIT was formed after Hindutva activists met the Kanpur IGP to complain about incidents of 'love jihad'. Hindutva groups got into the act after reports of a Kanpur woman, Shalini Yadav, marrying a Muslim man emerged. Though she denied the claim that she had been forced to convert to Islam and even recorded a video to make this clear, her mother claimed she had said so under "pressure" and the UP government decided to order a probe.

The SIT contacted all police stations across Kanpur to identify and investigate every allegation of forced conversion

involving Hindu women. Two months later, the investigation has been completed and a final report has been filed. When *The Wire* contacted SIT in-charge Vikas Pandey to discuss the findings of his report, he said, “The report is for the government, not journalists.”

His reticence may be linked to the SIT’s conclusions, which are sharply at variance with the political hype surrounding ‘love jihad’.

Also read: Even Sikandar Bakht, BJP Posterboy of Yesteryears, Would Know ‘Love Jihad’ Is Only a Ruse

In eight of the 14 cases probed, the women openly declared that their relationships with the accused were consensual and based on love. Six of these involve marriages with Muslim men, while two were confined to what the police report calls “love relations”.

One of these two women apparently told the police that she had had ‘love relations’ with a Muslim man but that was because the man had promised to marry her.

In the six cases where a *nikah*, or marriage according to Islamic rites, took place, the police treated the husbands as accused persons but was unable to produce evidence that the women were converted forcibly and not out of their own desire to get married.

One of the women was quoted as saying there was a love affair between her and the accused, and that she knew him from much before. Another woman confirmed to the police that she had consensually gone with the accused, made physical contacts and decided to marry him of her own free will. In a statement, a third woman said that there was no pressure on her to marry the accused and she had gone to him

on her own. Another woman said that she had had a *nikah* with the accused of her free will. The report notes that three of the women clearly added that the allegations mentioned are false.

Six cases to be prosecuted, but doubts remain

Of the 14 cases probed, only six have been identified by the police as suspicious. The SIT report says that the said women have “validated” the claims made by the complainants of the FIR, who are, in most cases, either the brother or father of the woman.

Of these, one involves an accusation of rape, two are of marriage where the man used a false name, one is an alleged kidnapping, one is of intimidation and one of a boy romancing a girl on the telephone using a fake name.

In the last case, the girl told the police she used to talk to a boy called Babu on the phone. But one day he took her to a mosque and asked her to convert to Islam, which she refused to do.

In the two cases of marriage under false pretences, the police said that the accused men had befriended the women using Hindu names. In one case, the police said that the accused had married the woman without revealing his religion, and told her about his religion only after the marriage was consummated. The accused had married the woman in court with false documentation, the SIT report says.

In one of the six cases, the accused used to threaten the woman and do “bad deeds” on a goods carrier truck, the police has said.

In another one of the six cases still being probed, the police have invoked IPC sections 360 (kidnapping) and 366

(kidnapping, abducting or inducing woman to compel her marriage, etc). The complainant, Rahul Srivastava, the woman's brother, says in his complaint, "*Saath kaam karne waala ladka...bhaga le gaya hai* (A man who worked [with his sister] has eloped with her)."

Also read: **Madhya Pradesh's So-Called 'Anti-Love Jihad Law' Is Old Wine in a New Bottle**


Though these are serious charges and carry a sentence of up to 10 years imprisonment, the accused in this case, Shahrukh, is now out on bail. According to a friend of the accused, he was released within a month of his arrest as no evidence was found against him. This casts doubt on the authenticity of the six criminal cases that have been registered.

Speaking to *The Wire*, Shahrukh's advocate, Azra, said that it was far from being a case of "love jihad" as it was projected.

When *The Wire* tried to contact the woman – whom the SIT report claims has "validated" the complainant's version – her brother picked up the phone and refused to let this correspondent speak to the woman. "My sister had been indoctrinated by the boy," he said.

When asked for more information on this case, Naubasta Police Station SHO Kunj Bihari Mishra said that he doesn't "remember details of the case".

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Referring to the recently launched Mission Shakti programme, the CM said it would ensure the safety, security and honour of women. The second phase, 'Operation Shakti', will target eve-teasers and put them to punishment or reforms.

"The court's verdict will be followed and the honour and dignity of women will be ensured," he said.

While dismissing a petition filed by a married couple seeking direction to others to not interfere in their married life earlier this week, the Allahabad HC court observed that "conversion just for the purpose of marriage is unacceptable".

"Conversion of religion to Islam, in the present set of facts, of the girls without their faith and belief in Islam and at the instance of the boys, solely for the purpose of marriage, cannot be said to be a valid conversion to Islam religion," Justice Tripathi said.



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TAGS: [CM Yogi Adityanath](#) [Love Jihad](#)

OPINION COMMUNALISM

Legal Howlers in UP's 'Anti-Conversion' Law Expose its Real Intent

With dubious framing and inexplicable logic, it seems clear that the law is meant to harass a large number of people.



Uttar Pradesh CM Yogi Adityanath. Photo: PTI



N.C. Asthana



COMMUNALISM 23 HOURS AGO

Superficially, the **Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance No. 21 of 2020** appears to be similar to the so-called **anti-conversion laws that are already in existence in eight states**. On a closer look though, it's clear that the UP ordinance is much more virulent. The other states, perhaps in the garb of modesty, had chosen to name their Acts, rather ironically, Freedom of Religion Acts; this one abhors pretensions.

The **UP law** is teeming with legal blunders that strongly indicate the real intent of the law is to harass people so much that conversion *per se* is discouraged.

Problems start with the preamble itself. Amongst other things, it seeks to prohibit what it calls 'unlawful conversion *by* marriage'. It may be noted that any reference to marriage is not found in the **Madhya Pradesh** and **Odisha** Acts, the oldest legislations of this kind in the country.

There cannot be any conversion 'by' marriage. There may be conversion 'for' marriage. 'By marriage' implies that conversion automatically follows any inter-faith marriage. This is factually incorrect. As Mashood Baderin, a professor of law at the University of London, **has explained** when it

comes to Islam, “Under Islamic law a Muslim man who marries a Christian or Jewish woman (*ahl-e-kitab*, that is, people of the Book) has a religious obligation to honour and respect both Christianity and Judaism. Thus the woman’s religious beliefs and rights are not in jeopardy through the marriage, because she would be free to maintain and practice her religion as a Christian or Jew.”

The **Uttar Pradesh law** fails to appreciate that conversion is not akin to an **irreversible chemical reaction**, which can take place in one direction only and there is no going back. Nothing tangible is changed by conversion. Even circumcision for males is **not compulsory for conversion to Islam or Judaism**, although it is a recommended practice.

After religious conversion, if someone feels that they were duped or forced into the change, they can always press the ‘undo’ button in their minds and approach the police for remedy.

In the ***Stainislaus judgment***, the Supreme Court, while upholding the constitutional validity of the **MP** and **Odisha** Acts, had held that they were meant to avoid disturbances to public order by prohibiting conversion from one religion to another ‘in a manner reprehensible to the conscience of the community’ and that ‘forcible conversion could create public disorder’.

Watch | ‘Need to Clinically Examine to See if ‘Love Jihad’ Claims Are True’: BJP’s Seshadri Chari

The state’s concern about forcible conversions is understandable as it could involve several crimes, such as wrongful confinement (**Section 342 IPC**), intimidation (**section 506 IPC**), kidnapping (**Section 359-369 IPC**), assault

(Section 352 IPC), threat of divine displeasure (Section 508 IPC) etc.

However, as mentioned earlier, the MP and Odisha Acts were silent on inter-faith marriages and the Supreme Court too had not commented upon that. Hence, the UP law cannot arbitrarily associate inter-faith marriages with public order.

With about 36,000 inter-faith marriages in India every year, about 6,000 of these must be taking place in UP. There has not been any breach of law and order all these years anywhere in the country over inter-faith marriages, not to speak of any breach of the more inclusive public order. On what basis, then, can they now suddenly start apprehending breach of public order in UP?

On the contrary, it can be argued that a possible breach of public order over inter-faith marriages is sought be invoked because, with the UP government's blessing and knowledge, some organisations sharing the ideology of the ruling party might be hell bent upon disturbing public order.

‘Mass conversion’ and its penalty

Section 2(f) of the UP law defines ‘mass conversion’ as an incident where two or more persons are converted and regards it as a more serious event. This is not just arbitrary, but ridiculous. Suppose a family of three – husband, wife and an adult progeny – decides to convert together. On what logic can the state regard it as a more serious event than an individual's conversion, and acquire the right to interfere in their collective choice?

Also read: UP Police Reopens ‘Settled Matter’ to Register First Case Under Yogi's New Anti-Conversion Law

Conversion cannot be equated with rape, where gang rape is regarded as a more heinous offence because of the sheer immorality and violence of several men overpowering a lone woman. Otherwise, the punishment for one murder or a hundred murders is the same.

Dubious focus on ‘convertor’

Section 2(i) of the **UP law** coins a new term, ‘Religion Convertor’. This is factually incorrect and obviously driven by ulterior motives. Conversion in general does not necessarily require the assistance of a convertor, nor witnesses. One can convert even in complete solitude. For example, in the case of conversion to Islam, all that is needed is the **pronunciation of the ‘Shahada’** (I testify that there is no true god [deity] but The God [Allah], and Muhammad is the Messenger and servant of God), with sincere belief and conviction. By artificially introducing the concept of a convertor, it appears that the state’s motive is to gain an extra handle for harassing a larger number of people.

Criminalising the act of ‘convincing’

Section 3 of the **UP law** has two additional clauses, which the **MP** and **Odisha** Acts do not have. First is what they call conversion by marriage. Second is ‘nor shall any person abet, convince or conspire such conversion’.

While abetment and conspiracy are recognised in law, ‘convincing’ is not. This is pure fiction. Under this law, it could mean that if four Muslims happen to be discussing the merits of Islam at a teashop while a Hindu customer is also present and taking part in the conversation, they could be trying to ‘convince’ him to convert to Islam!

Exemption for ‘ghar wapsi’

The second proviso of Section 3 is even more ridiculous. It says, “Provided that, if any person reconverts to his/her immediate previous religion, the same shall not be deemed to be a conversion under this Ordinance.”

Reconversion could be either because of one's own thinking, or through somebody else persuading them. It can be argued that the proviso is concerned with what is popularly known as ‘*ghar wapsi*’ (homecoming). In effect, it means that some individuals or organisations have been given a license to do whatever they want to bring their ‘deviant’ friends back to the folds of the ‘parent’ religion and in the process, whatever they do shall not be described as ‘abetment, convincing or conspiracy’.

Held to ransom by one and all

Section 4 of the **UP law** enables any person who is related to the one converting by blood, marriage or adoption to lodge a complaint. Leaving aside one's parents and siblings, it means that even one's cousins (progenies of uncles from both sides) could argue to be related by blood and complain. Next is ‘related by marriage’. If they mean spouses, they should have spoken of spouses. However, the brothers/sisters of one's spouse and the spouses of one's brothers and sisters are also arguably related by marriage. Adoption too is amusing. This means even your adopted son or daughter could object to your conversion and lodge a complaint! This means that an inter-faith couple can be held to ransom by all such people.

Section 9 of the **UP law** defies common sense. It creates a second hurdle in the form of objections from the public after the conversion has taken place. The conversion will be confirmed only when this hurdle is also crossed. Why, we do not know. Do they think that the cumbersome procedure including the so-called police inquiry could also be manipulated? Then why did they enact it in the first place?

The only plausible reason of this is to make the whole thing so difficult that it deters people from conversion.

The **MP** and the **Odisha** Acts provided for one-year punishment. The **UP law** raises it from one year to up to five years. The so-called 'mass conversion' attracts three to ten years jail. The motive behind such harsh punishments should be obvious.

Also read: Anti-Conversion Laws See Love as a Hate Crime

Section 5(2) of the **UP law** provides for compensation of up to Rs 5 lakh to 'victims of conversion'. They have not bothered to explain the rationale for this. It could perhaps be argued that the philosophy might be similar to that of **compensation to rape victims**. In any case, if they seek to compensate, it would mean that they believe that someone who converts undergoes some sort of mental trauma. How, no one knows.

Unlimited powers to police

Section 8(3) of the **UP law** mandates that the person concerned and the convertor both have to give notices and the district magistrate shall get an inquiry conducted through the police with regard to real intention, purpose and cause of the proposed conversion.

Needless to say, this gives the police unlimited powers, which will, in all probability, be abused. It is well known that police in India have been acting as the hatchet men of the ruling party. What prevents the police from fabricating an intelligence report that a proposed conversion violates the provisions of this law? The onus will then be on the affected party to move the high court and fight a long and expensive legal battle.

Section 12 of the **UP law** is amusing. The burden of proof that the conversion was ‘lawful’ lies on the person who has ‘caused’ the conversion. They do not bother to ask the person who has converted – his or her opinion does not matter at all. The government seems to be more interested in prosecuting and harassing the ‘convertor’.

For the sake of argument, even if it is granted that the government is keen on prohibiting forcible conversions, all that it needs is that the converted person be asked to depose before a judicial magistrate within a certain period of conversion and submit the statement to the government.

Recently, the **Allahabad high court held**, “Right to live with a person of his/her choice irrespective of religion professed by them is intrinsic to right to life and personal liberty. Interference in a personal relationship would constitute a serious encroachment into the right to freedom of choice of the two individuals.” The **Karnataka high court held** essentially the same thing. The **Delhi high court held** that an adult woman was free to reside wherever she wished and with whomsoever she wished and directed the police to counsel the petitioner and the parents not to take the law into their hands or threaten either the woman or the man.

The UP law goes clearly against these judgments and is therefore likely to be struck down as *ultra vires* of the constitution. We are constrained to infer that the ulterior motive of such a harsh law and provision of stringent penal provisions at every step appears to be nothing but harassment. The law has quite understandably not used the infamous words ‘love *jihad*’ in it, but people know the political agenda behind it better.

Dr N.C. Asthana, a retired IPS officer, has been DGP Kerala and a long-time ADG CRPF and BSF. Views are personal. He tweets @NcAsthana.



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Hotel raids: Made a mistake, cops were overzealous, admit Mumbai Police

Inquiry is on, action will be taken against officers who participated in the raid, says JCP (Law & Order) Deven Bharti.

Written by **Rohit Alok** | Mumbai | Updated: August 11, 2015 7:47:30 am



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The Mumbai Police had booked 13 couples on August 6 for alleged indecent behaviour after knocking on hotel rooms and carting them away to Malvani police station.

The Mumbai Police Monday admitted that detaining 13 couples after raiding hotels in Madh and Marve was “wrong”. Joint Commissioner of Police (law and order) Deven Bharti also said that the entire operation got “messed up”.

“I admit it was the police’s mistake. There are some officers who were overzealous. They should not have taken the 13 couples into custody. The inquiry (into the incident) is still under way,” said Bharti, adding that action would be taken against officers who participated in the raid.

The Mumbai Police had booked 13 couples on August 6 for alleged indecent behaviour after knocking on hotel rooms and carting them away to Malvani police station. The raids were reportedly carried out following an “unverified” tip-off that “prostitution-like activities” were happening there.

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Bharti said the “intention of the operation was to take action against “immoral activities” — something locals in the area have been complaining about.

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“They (officers who conducted the raids) should not have entered hotels and asked guests to step out of their rooms. However, not all couples came from the rooms; some were found behaving indecently in the open at various sea-facing points in the hotels,” Bharti said. “Information on immoral activities got messed up by the detention of guests.”

Senior police officers said about 15 officers were involved in the operation. “We will identify them from CCTV cameras at various hotels and take action. The police have said they were API and PSI-level officers,” Bharti said.

The raid started at 3 pm and the couples were detained for five hours — allowed to leave only after they paid a fine. Police sources said a special team was formed by the Zonal Deputy Commissioner of Police Vikram Deshmane with four locations — two hotels and two cottages — “marked” for raids.

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The 26 persons were fined under Section 110 (indecent behaviour in public) of the Bombay Police Act, while three cases were registered for alleged prostitution under the Prevention of Immoral Trafficking Act.

Senior police officers said that three men fled the scene from outside Mantara Residency — one of the hotels that was raided — while three women were arrested and charged for prostitution.

Officers said the Mantara Residency hotel had been under the scanner since 2009, when a 13-year-old girl was allegedly raped there.



found inside my hotel. I have been told they were found outside my hotel, so are my guests being harassed?”

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Bharti rejected claims by hotel owners that they had been charged for creating “nuisance” under the Bombay Police Act, but added that action could be taken against them after the inquiry is complete.

However, the owner of one of the hotels said, “I paid a Rs 1,200 fine for nuisance. If they didn’t charge us, then why did I pay the fine?” the owner said.

On Sunday, police had launched an inquiry into the incident. Additional Commissioner of Police, North region, Fateh Singh Patil said a report will be prepared in the next three-four days. Senior officers at the commissioner compound have already been briefed about the “basic facts and faults” of the operation.

Milind Khetle, senior police inspector at Malvani police station, where the couples were taken, said his officers had been receiving complaints about people drinking on the road or indulging in immoral activities. “These are regular complaints we receive and we act on them,” Khetle said.



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SHIV SENA GOONS FORCE COUPLE TO GARLAND EACH OTHER ON VALENTINE'S DAY IN CHHATTISGARH

THIS STORY IS FROM FEBRUARY 15, 2016

Shiv Sena goons force couple to garland each other on Valentine's day in Chhattisgarh

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but the youth wing in

Chhattisgarh (<https://timesofindia.indiatimes.com/india/chhattisgarh>)

's Korba district was out on moral policing and forced a young couple to garland each other at public place when they were caught at an isolated place on Sunday.

The outfit had announced that couples would be forced to tie rakhi or garland each other if found romancing at public places.

While the couple is yet to lodge complaint at police station, their pictures are all viral on Whatsapp and social media with garlands and Shiv Sena activists standing behind with flags.

A couple at a park close to Bhawani temple at Darri area was rounded up by the Sena guys and in a bid to escape from their clutches couple claimed that they were engaged, eye witnesses said. In stead of sparing them free, Sena activists got garlands from temple and asked them to perform ritual of garlanding.

Talking to TOI, Hemant Pandey, district in charge Shiv Sena said that they have already issued alert in police and public that the activists of Shiv Sena, Dharam Sena and VHP would raid parks, restaurants, temples and other public places and if couples are found pecking around, they would be asked to tie rakhi or garland each other.

"This couple was spotted at an isolated place and they tried to elope on noticing us. When asked, the boy said that the girl was his fiancée, so we asked them for garland ceremony to which the guy didn't hesitate at all," Pandey said.

Though the couple reportedly was planning to lodge police complaint, Korba ASP Suresh Pauranik said that police were aware about such incident taking place and would investigate once the matter is reported.

Condemning his party workers' act Shiv Sena state president Dhanajay Parihar told TOI, "despite issuing directives across the state to not indulge in anti-social activities and refrain from disturbing law and order. I am aware about this incident and the boys would be taken to task on February 28 during a state meeting."

with the assurance there were few girls who had contacted us on Sunday pleading for help in their inter-religion marriages and

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Raman Singh government had given standing instructions three years ago to government schools across Chhattisgarh that the idea of celebrating lovers' day on February 14 should be replaced with observing 'Matru-pitru diwas' (parents' worship day).

The idea was conceptualised by Asaram on his visit to state, who had suggested chief minister that Valentine's day celebration should be replaced with worshipping of parents to instill India culture among children.

While the schools were closed on Sunday, a huge pandal was erected at Telibandha lake in the evening to observe the day as parents' worship day. A huge poster of self-styled godman Asaram, now in jail facing rape charges under POCSO Act, was set up where his followers were distributing his booklets and prasad to people.

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Kerala | Written by Sneha Mary Koshy | Updated: February 24, 2017 1:00 pm IST

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Kerala Man, Filmed On Valentine's Day, Found Hanging

The couple in Kerala's Kollam were attacked and filmed on Valentine's Day.



Thiruvananthapuram: A young man who was attacked, filmed and targeted with a video on social media by moral vigilantes on Valentine's Day, was found hanging outside his home in Kerala's Palakkad district on Thursday. A suicide note been has found in which he has cited the harassment on Valentine's Day as the reason for taking the extreme step, police said.

The man, 22, and his woman friend were harassed by five men near a beach in Kollam on February 14. The couple had reportedly moved to a nearby bushy area so the woman could relieve herself since there are no public toilets on the beach.

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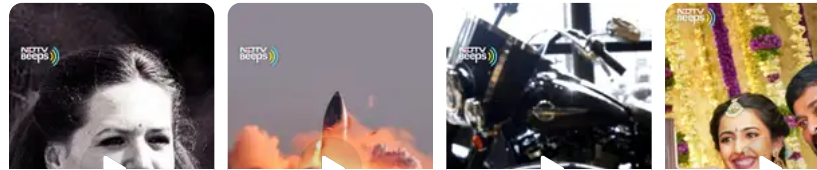
The accused threatened and videotaped the couple, asking the woman humiliating questions and circulated the video on social media, the police said. The gang allegedly tried to assault her and when the man stepped in to defend her, he was attacked.

After the couple complained to the police, the men were arrested.

According to the police, the man was upset and stayed aloof after the incident, as claimed by his friends. He hung himself from a tree outside his house yesterday.

The state human rights commission, taking of note of the suicide, has asked the police to file a case. Police sources said they have filed a case of abetment of suicide against the accused.

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Earlier, Kerala Chief Minister Pinarayi Vijayan also asked the state police chief to take strict action on incidents of moral policing incidents. "Such criminal activities will not be tolerated in Kerala," Mr Vijayan had warned.

The police were left red-faced this week after [another couple from Thiruvananthapuram live-streamed their exchange with two constables](#) on Tuesday after they were accused of indecency. Vishnu SS, 24 and Arathy SA, 23, who had met at a park in the Kerala capital, were harassed, questioned and fined exactly a week after Valentine's Day.

"Having someone's arm on my shoulder is not wrong. Booking people for as small a reason as this has to stop," Arathy had told NDTV.

As the police came under a barrage of criticism, state police chief Loknath Behara said he wished "it had not happened" and public display of affection, while frowned upon by society is not illegal

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Couple beaten up for hugging in Kolkata's Dum Dum metro station

A young couple was forced out of a packed Kolkata Metro Railway coach by fellow middle-aged commuters and thrashed at Dum Dum metro station for hugging inside the coach.

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The young boy and girl being beaten up by agitated middle-aged men in Dum Dum metro station in Kolkata. | EPS

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● Kolkata: Protests outside metro station over 'moral policing' incident

By Aishik Chanda

Express News Service

KOLKATA: In an unprecedented incident of moral policing, a young couple was forced out of a packed Kolkata Metro Railway coach by fellow middle-aged commuters and thrashed at Dum Dum metro station for hugging inside the coach on Monday night.

The first-hand narrative of an eyewitness along with photographs clicked by him were published in a Bengali daily on Tuesday. It stated that the incident sparked after an old man objected to the hugging of a young couple inside the metro coach near Chandni Chowk metro station in central Kolkata and culminated seven stations later in the mob violence in Dum Dum.

"While the couple tried to persuade that they hugged to protect the woman from groping, the aged man refused to listen and argued that they were 'polluting' the atmosphere and suggested that they should instead visit a bar in Park Street. The boy gave prompt answers to the aged man's remarks and smirked when he asked

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whether he thought he was Salman Khan. The other middle-aged male passengers got irked by the smirk and warned him of 'dire consequences' upon arrival of Dum Dum station," the narrative read.

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"When the train entered Dum Dum, the 5-6 middle-aged men dragged the couple to the platform and thrashed the boy black and blue. When the girl tried to save him, she was beaten up too by the irate men. However, finally, youth and women intervened and rescued the couple and escorted them out of the station," the narrative added.

However, police said they could not take any action as the couple had not filed a complaint.

Nevertheless, as soon as the report got published, youth took to the social media to criticise the act of the middle-aged men with some questioning about people's morality and conscience when they keep mum when a woman is teased, groped or molested in full public glare in public transport throughout West Bengal.

A group of students held protests at Dum Dum station against the incident on Tuesday showcasing placards against moral policing.

Speaking out against the incident, noted author Taslima Nasreen tweeted: "A young couple embraced in Kolkata metro. It made a bunch of frustrated old losers angry. They beat them up. Scenes of hatred are allowed. Scenes of love are considered obscene."



Speaking to The New Indian Express, West Bengal Women's Commission chairperson Leena Ganguly said: "The accused might believe that hugging in public space might be against Indian culture and they could have protested. But, they have no right to take law into their own hands. I request the victim woman to approach us so that we can take the case forward."

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‘Love jihad’ rumour: Wedding stopped in UP, Muslim couple kept overnight at police station

The man, 39-year-old Haider Ali, has alleged that the police personnel beat him up with a leather belt and tortured him for hours at the Kasya Police Station.

The police in Kushinagar, Uttar Pradesh, stopped a wedding ceremony on Tuesday and took away the couple following a phone call claiming that a Muslim man was marrying a Hindu woman after converting her, letting them go only the next day after finding that both were Muslims. The man, 39-year-old Haider Ali, has alleged that the police personnel beat him up with a leather belt and tortured him for hours at the Kasya Police Station.

The couple finally got married on Wednesday after the brother of the woman, Shabeela Khatoon, 28, arrived from Azamgarh district and told the police that if she wanted the wedding, the family had no objection.

Kasya Police Station SHO Sanjay Kumar blamed “miscreants” for spreading rumours of ‘love jihad’, and said they had let the couple go after realising both were major and of the same religion. Circle Officer (CO) Piyush Kant Rai said they acted promptly as “the atmosphere is tense and the administration is strict about such cases”.

Denying allegations of torture, Kushinagar SP Vinod Kumar Singh said several senior officers as well as the Local Intelligence Unit and some “respected locals” had arrived at the police station after hearing about the case. “It was not like the couple were brought to the police station in secret. Also, the matter was soon sorted... There was no reason to beat up anyone.”

Also Read | [In UP, ‘love jihad’ has two faces: man jailed in one case, woman gets police escort in other](#)

Ali, who lost his first wife 10 years ago and works as a barber in Azamgarh, told [The Indian Express](#), “On Tuesday afternoon, Shabeela and I got married. After the ceremony, a small party was on when a police team arrived and said there had been no nikaah. They wouldn’t listen to anything and took us to the police station around 7.30 pm. There they let the cleric go after he changed his statement and said the nikaah wasn’t final yet.”

While the watchman of Ali’s village Gurmiya in Kushinagar, Mushtaqeem Ali, admitted making the call on a tip-off by some Hindu youths, a local social activist who facilitated the wedding, Arman Khan, claimed a few Hindu Yuva Vahini members had “interrogated” the couple before the police arrived.

Ali said that at the police station, Shabeela was sent to another room and he was beaten up with a belt. “One of the policemen asked another to skin me... I tried to talk to them... When Shabeela heard me crying, she panicked. The policemen asked

her about her family but she was scared. Only around 9 pm could I convince her to tell the police her brother's number.

Explained | [Uttar Pradesh's 'love jihad' law, and why it could be implemented vigorously](#)

Her family told the police she was Muslim, and sent a photo of her [Aadhaar card](#) and even made a video call. The police personnel were polite after that, but still did not let us go. They said they would wait for her brother to arrive. I was kept in the verandah in the cold," he said. Kushinagar is around 130 km from Azamgarh.

SHO Kumar said they let Ali and Shabeela go after she said in her brother's presence that she did not want to go with her family and would marry Ali. "Her brother said if she wanted to get married, they did not have any objection."

Arman Khan said Ali had approached him a week ago seeking help to get married to Shabeela. Khan was taken to the police station on Tuesday along with the cleric conducting the ceremony. Ali said Shabeela and he had known each other for "very long", and that around a week ago, she had run away from her home in Azamgarh, and moved into his rented room.

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Kasya CO Rai said they had confirmed that her family had lodged a missing person's report at Mubarakpur Police Station in Azamgarh after she left home on December 4. Rai said, "The two knew each other for the last around one-and-a-half years. On Tuesday, we got a call at the Kasya Police Station that a Muslim man was going to marry a Hindu woman... The information was given by a few locals of the village who said they had heard that a 'love jihad' marriage was going to take place."

Rai admitted that after the police stopped the wedding ceremony and brought them to the police station, Shabeela had told them "she is a Muslim and is getting married as per her will". On whether they would take action against those who had spread the 'love jihad' rumour, the CO said an information could be wrong but did not amount to criminal charges.

Mushtaqeem said after some Hindu locals approached him saying a 'love jihad' wedding was being held, he considered it his duty to pass on the information to the police.

ANNEXURE -P-12

Seal of Greater Mumbai Police

O.W.No.059/DY.TC/BP/V/06

Dy. Police Commissioner

The Harbour Area Office

Mumbai

Date : 15.4.06

To,

The Police Commissioner

The Greater Mumbai

Sub: The inquiry report on Mumbai High Court Writ

Petition No. 30713072, 3073, 3074/05

Ref: 1. The Order of High Court dated 22.2.2006

The letter no. 2481/06 dated 23.2.2006

Of Addl. Government Pleader

The letter no. 308/06 dated 25.2.2006

Of Asst. Police Commissioner(Offence)

Mumbai

Sir,

In connection with above subject, you are hereby informed that as per the above referred letter no. 3, you are appointed as Enquiry Officer in Writ Petitions No. 30713072, 3073, 3074/05 in the High Court, Mumbai.

We hereby submit the enquiry report as per below:

1. While enquiry, the Petitioner in Criminal Writ Petition No. 3071, the Petitioner Mr. Ajay Sharad Nigam and the Opponent in this Petition his wife Smt. Geeta Premjibhai Patel, his mother and father in-laws and on behalf of Mr. Ajay Nigam the witnesses Mr. Vasanthrai Mohanlal Chudasama, Hindu, age 63 years, Mr. Prakash Shankar Sakhpal, Hindu, age 46 years, Mr. Chirag Dilip, Hindu, age 24 years, their statements are recorded, Shri Ajay Sharam Nigam stated as below:

Mr. Ajay has got married with Geeta Premji Patel on 23rd May, 2004 and after the marriage, they were staying in their house. For the marriage of Geeta, her parents have tried their level best. Geeta went to stay with Ajay. After 1 1/2 months, on 30th November 2004 Geeta came to her mother's place for Coppertee. But she did not come to Mr. Ajay's house by late night, then Ajay searched out but she could not be found out and her mother/father were not at home. In this connection, he lodged complaint at Pantnagar Police Station. On 3rd December 2004, he received on phone number 22819372 by Geeta. She told that she was away from

her mother and father and she was staying with her friend and she told that she will return within 15-20 days. The address of the phone was searched and Ajay and his friends went to Ahmedabad. When Ajay was alone in lodge, one person came by black Scorpio Car and he said that he was from Crime Branch and shown the Pistol to Ajay and took his signature on documents. Ajay was afraid and came back to Mumbai. He submitted complaint application in 34th Court, Vikhroli, Mumbai and it was enquired by Tilak Nagar Police Station by Police Inspector, Mr. Prakash George. On the basis of the said complaint Geeta came to the Court and gave the Application that she does not want to live with Ajay. But she should submit such application before Ajay therefore she was asked to attend the Court on another day. When she came to the Court in the Chamber meeting Geeta told Ajay that someone who came at Ahmedabad, Naroda was Babu Bajarangi who is a leader of Patel community and he took signatures on the papers from Ajay and Bharti Patole who was staying with him has ran away from him and he is now staying at Nipani. She told that he will get all information from her was told by Geeta to Ajay and afterwards Geeta gave a statement in the court that she is separated from Ajay.

In the meanwhile, Geeta has submitted a suit in Ahmedabad Court for maintenance. In the said suit, the Advocate has brought to the notice of the Court that the address of Babu Bajarangi who is the main accused in Godhra massacre case and the address of Geeta were

same. Afterwards, Geeta was the resident of Maharashtra, therefore, the said case was stayed.

In connection with the above incident, Ajay gave his statement on T V. that Geeta was present around Babu Bajarangi at his office at Naroda and I have received the CD of the said incidence. (Ext-A.12, Ext. A.13).

Overall Babu Bajarangi who is the leader of Patel Community and Navchetan Trust due to his terrorism Geeta is residing away from Ajay, this was the complaint. (Exhit. "A").

In the statement of Ajay declared witness Chirag Dilip Goel, Hindu 24 years. He gave statement that he went with Ajay to search Geeta with Ajay to Ahmedabad. But on the same day when he went to Ahmedabad, on 2nd day, there was a marriage of his relative. He left Ajay and Prakash and went for marriage. In addition, he saw the statement of Ajay on TV in news, the similar incidence was happened for Prasanth Samudre in Meeraj was came in contact then Ajay has shown his wife's photo, then Chirag has shown his wife's photo. That photo was of Geeta Patel's brother Shivrul Patel's wife which was identified. At that time, he told the said incidence to Prasanth Samudre. Shivrul told that his marriage was occurred with the said girl which was stated by Chirag. Chirag Goel and Ramesh Sakhpal (at the Naka of at Harbajanji Lane) are the newspaper sellers and submitted an Affidavit (Ext. -A.2).

In the statement of Prakash Shankar Sakpal, Hindu, 46 years stated that he went with Ajay to search his wife Geeta at Ahmedabad when he was waiting at lodge, Ajay went out to bring some materials and he did not return for a long time when I was about to go to complain, immediately Ajay came and told that one person forcibly carried him away and took his signatures on some documents on the point of Pistol. In this case, the help of the Advocate is taken. The Advocate said that do not complaint otherwise they cannot go out of Ahmedabad. Then first they came to Mumbai and on the basis of the Complaint of Ajay, Police Inspector Prakash George has recorded his statement and recorded the statement of Ajay. (Ext.A.3).

The statement of witness Vasanthrai Mohanlal Chudasa stated that his son Jitendra alias Jithu married with Jigna Patel, on 6th August, 2005 Shanthibhai Patel and Atulbhai Patel two persons came to their shop and they said they are the members of Navchetan Group and told that your son's marriage with Jigna Patel is not correct and you have to suffer the consequences and referred the name of Babu Bajarangi and threatened and what they can do was told by them with an example the resident Ajay Nigam at Ghatkopar. (Ext. A-4).

Afterwards Ajay wife's Geeta recorded her statement that she got married with Ajay on 30th November 2004 and she went to her mother's place for installation Copper T, then she went to Gujarat from Mumbai Central by Train to Ahmedabad. She went to her uncle

and she told about her marriage and said that she does not want to stay with Ajay. Then her uncle took her to Babu Bajarangi and told him to solve the problem. Then Babu Bajarangi told to call Ajay to sign on divorce papers. Hence Ajay was called to Ahmedabad on phone and before uncle both have signed voluntarily on the papers and she went away from Ajay voluntarily was stated by her (Ex.-A-1)

Geeta's mother Smt. Kanta Premji Patel her statement was recorded that Ajay and Geeta agreed for marriage and she was not interested in Maharashtrian system which was told by Geeta. Geeta wanted to fix up Copper T on 30th November 2004 and she told her to accompany with her. But, refused therefore Geeta went alone. On that day, there was a marriage in the house of relative and the children were kept in brother's brother house and went to Baroda, after marriage she returned to Mumbai on 5th December 2004 then Geeta phoned them that she is with uncle Eswar Patel and she herself and Ajay have signed on divorce papers and Geeta is not coming back to Mumbai was told by her. Babu bajarangi was the distant relative from Mother side was told by her (Ex.A-6).

Geeta's father Premji Nanji Patel stated that he accepted the statement of his wife. Geeta has decided not to stay with Ajay and the question was asked as mother and father what they have tried establish a relation between them. But he could not reply. (Ex.A-5).

The other Petitioner in Petition No. 3072 Prashant Pramod Samudre, his statement was recorded and the Opponent in this Petition Prashant's wife Geeta Jayantibhai Patel and also Prashant's mother – father in-laws statements were recorded. Prashant Pramod Samudre's statement is recorded which given herebelow:

On 5th May 2004, he got married with Geeta, final exam of college was near. After marriage not to disturb the college they were staying separately in their own houses and by end of the examination, they went for Honeymoon by informing in their respective houses and came back after 15-20 days. Geeta's mother and father were tried to take Geeta back but after objections for some period they stopped their efforts. Then after a month, Geeta's parents talked on phone to Geeta. But both houses were reconciled therefore it was neglected. On 12th February, 2005 Geeta went out of the house to visit a hotel but she did not come. Prasanth searched for her but she was not available any where, they he immediately talked with Geeta's father on mobile. Father told that Geeta was with him and she will be sent to Hotel within 15-20 minutes. Afterwards, he contacted again on mobile, but the mobile was switched off, then he searched around and on 2nd day he lodged complaint missing of Geeta in Meeraj City Police Station.

On 14th February 2005 in afternoon, Geeta phoned on Prasant's mobile no. 7922819372 and requested him to withdraw the missing complaint. Afterwards, on 18th February, 2005 at 12.30, he

talked on mobile no. 7955738053 and again she requested to withdraw the complaint and again she phoned, then confirmed the said phone which was belonged to Ratan Katri at STD booth, Shriram Telecom, Bada Shiloda Road, National Highway No. 8 Gandhi Nagar, Gujarat and his mobile number was 9426394867, the said girl came in black Scropio Car and with her there was one blackish short girl. Afterwards, on 24.2.2005 at 3.38 received on 792377436 and the same incidence he was reported and that blackish girl has also phoned on 8338221210 the said phone was belonged to Suman C Patole, 2753, Metre Galli, Nipani Karnatak then it was known that the daughter in law Bharati Patole was taken away by Babubai Patel alias Babu Bajarangi to Naroda Gujarat on 6th February, 2005.

Afterwards within a week Mrs. Suman Patole told that her daughter in law came back. At that time phoned to Bharati enquiring about Geeta she gave the address of Geeta who was under custody of Babu Bajarangi at Naroda. We went there but the persons who came to bit ran away. The similar incidence was happened to Abhijit Sonawane at Pune who was contacted and gave information to him about Babu Bajarangi. In the meanwhile, Ajay from Mumbai made statement on TV with his friendship Chirag Goel and Ramesh Sakhpal have seen photo of Geeta and she was got married with Shivilal Patel and in this connection, an Affidavit was submitted was told (Ex.B)

Prashant Samudre, his wife Geeta Jayantibhai Patel her statement was recorded and she positively accepted the marriage, after the marriage, Prashant was quarrelling with her and he was spending more time among friends. Therefore, she suffered Psychologically. She came out of the house on 12th February, 2005 as she decided not to stay with Prashant and talked on phone with mother father and she decided to stay with father's sister Smt. Kantaben Shivilal Patel, Naroda, Ahmedabad. In this connection, Prashant was incormed on phone. She went away from Prashant voluntarily. In this connection, I have given statement in Meeraj Police Station. (Ext. B-1).

The opinion which Geeta has expressed, on that basis she was tried to convince, in this connection, out of the fatherly approach contacted with Prashant was enquired but he kept mum.

The third Petitioner in Petition No. 3073 Abhijit Vijay Sonavane, he gave statement that Opponent in this Petition Abhijit's wife Bhavana Vikrambhai Patel and also Abhijit's mother – father-in-laws Mrs. Jayaben Vikrambai Patel and Shri Vikrambai Gopalbai Patel, their statements are recorded and in the statement of Abhijit Vijay Sonawane has stated herebelow.

On 18th August, 2004 Abhijit got married with Bhavana, on the same day mother and father and relatives 5 to 6 persons of Bhavana came to the house and told him that she rejected him. Then Bhavana's mother father told that they will take her under any

circumstances away and they went away. After some days, Bhavana's relative Tulsi Patel has threatened Abhijit he submitted an evidence that Bhavana is pregnant under marriage relations on 10th May, 2005. On 21st May, 2005, he went for admission for his brother at Panchgani and after completion of admission work at 6.30 p.m. while he was returning to Pune by Maruti van, some relatives came in the way by black Scorpio car and thrown red chilli powder in eyes and beaten his relatives and carried away Bhavana. In this connection, he went to Shiraval Police Chowky and lodged the complaint. The said complaint was published in newspapers and on TV. After some days Police told that Bhavana has given statement that she does not want to stay with him.

In the said statement, the first witness was Babubai Rajabai Patel and its copy is submitted. Bhavana's relative carried away Bhavana due to hand of Babu Bajarangi. Tulsi Patel is not connected with it. The complaints against him should be taken back such threatening were received. His incidence was received publicity therefore Prasant Samudre who also have the similar incidence came in contact with him. In the meanwhile Kiran Patole has told the incidence on phone and in the meanwhile Bhavana lodged a case of maintenance which was stated. She withdrawn the said case and filed a case of divorce was told. Going to Panchgani was told earlier two days by Bhavana to her sister which was stated (Ext. C).

Abhijit's wife Bhavana her statement was recorded she also accepted the said marriage. After marriage, Abhijit's relatives used sharp words against her for not preparing Maharashtrian food. When her grandmother was expired and when her elder got married she was not sent to her mother's place and she was excluded from her father's property and Abhijit was also not behaving properly with her, which she has stated. On 21st May, 2005, Abhijit's aunty's son's admission at Panchgani all went to Panchgani, they came back to Shivaji Nagar, Pune by seeking help of unknown Ambassador at 17.00 and caught train at 21.30 and went to Ahmedabad and she went to her relative Monica Ganpatbai Patel at Takshasila Society, NSQ Complex which she stated. She stayed there for 4 to 5 days. In the meanwhile, Abhijit lodged complaint in Police Station against his mother father, which was known from publicity media, then they informed to father of Abhijit that she went away with her own willingness. But Police went to Ahmedabad they enquired immediately at Bhavnagar at uncle Shri Vithalbai Vasarambhai Patel whether Police have arrived, then he told about arrival of police, their uncle Shri Rameshbhai Keemjibai Patel and brother Shri Kailashbai Somanathbai Patel took Police with them and came to Kutch Kadva Patidar Naroda Samaj office and Kandala Police recorded the statement and they stated that she came with her own willingness there and the complaint by Abhijit against his mother and father was a false case. She went away with her own willingness therefore she does not a person named as Babubai which was told.(Ext. C-1).

Bhavana's mother Jayaben Vikrambai Patel aged 48 in her statement stated that she went to Bhavnagar Gujarat on 16th May, 2005 and Kandala Police came there on 24th May, 2005 and on the basis of phone of Bhavana it was recorded that she lived Abhijit and she stated that she does not know Bajarangi.(Ext.C-3).

Bhavna's father Vikrambai Patel made a statement that they have accepted marriage of Abhijit and Bhavana and Bhavana when she went away from Abhijit at Panchgani on 21st May, 2005, on that day, they went to Gulbarga due to death of a relative of Nikhita who is their second daughter and the said incidence of Bhavana was told to him by his wife at Gulbarga on phone and he stated that he does not know Babu Bajarangi(Ext. C-2).

The Fourth Petitioner in Petition No. 3074 Raju Buchaiya Medige his statement and also Naval Somjibhai Patel Raju's wife her statements were also recorded. In the statement of Raju Buchaiya Medige was stated is mentioned herebelow:

Raju Medige has got married by registration with Naval on 12th December, 2003 and they were staying separately. In the meanwhile, Naval received many offers for marriage, she told about one Australian proposal regarding marriage and it was told by that boy in his house therefore she could not come out of her house, which was told by Naval. Naval's relatives came on 14th January, 2005 and told him to sign on divorce papers and threatened him as her

mother's health suffered hence they went to the family court at Thane on 15th January, 2005 and signed on the papers.

After above incidence one day Naval told on phone, there was a pressure upon her to divorce and she told that she was forced to attend before Babu Bajarangi the leader of the community. Again, when he was called to sign on remaining divorce papers in Thane Court on 29th August, 2005, he refused and afterwards the office bearers of Navchetan Samstha came to him and threatened.

Afterwards, 5-6 times, Naval phoned him the uncle of Naval came to the house in October, 2005 and he told that the case of Naval is in the hands of Babu Bajarangi and they can't do anything. Ajay Nigam resident of Ghatkopar was his earlier friend. He came to know his incidence and he came to know the other similar incidences about Prashant Samudre in Meerach and about Abhijit Sonawane in Poone and seen the publicity in newspapers and TV(Ext.-D).

Afterwards, Raju's wife Naval Somjibhai Patel her statement was recorded in which it was stated that Naval got married with Raju and she went at Raju's house, Raju's mother has not accepted this marriage, at that time, stayed one night at Raju's house and she went back to her mother's house and she told Raju that she cannot stay under such circumstances, then she informed about her marriage with Raju to her father and she told not to go against to Raju's House and submitted case for divorce in family court at Thane on 15th January, 2005 and Raju signed on the case papers. She went to her aunty Hansaben Shantibai Patel on 24th September, 2005 at Kutch Gujarat

and stayed there for 4 month she separated herself willingly from Raju and the allegations of Raju on her and on her family were baseless which was stated and she told that she does not know Babu Bajarangi, she came to know about Babu Bajarangi, who was a powerful person in the community was known to her by newspapers and publicity medias(Ext.D-1).

In addition, on behalf of the Petitioner, the Affidavit was submitted by Rima Rebello and her husband Anthony Rebello and their statements are sealed. Kindly see those (Ext.- E & E-1).

In the said case, the first witness Bharati Patole who was relieved from the custody of Babu Bajarangi and her husband Kiran Patole and husband's sister Tejaswani Patole, their statements are recorded and sealed, kindly go through them. (Ext.F, F1, F2).

All above statements and total enquiries were taken into consideration and collected useful material for enquiry which are mentioned in above reference – documents and the statements publicized in new channels by the Petitioners and the films, CDs all available evidences were gone through and found the following things.

(i) All above four girls belong to Patel community, the reasons which they have given to go away from the husbands are minor reasons. But those are assumed they are born in Mumbai, Pune, Thane,

Meeraj(Sangli) in cities of Maharashtra and they went away to Gujarat from their husband's houses and sought divorces and maintenances from Gujarat Court which is a suspicious factor.

(ii) The wives of Ajay Nigam, Prasant Samudre, Abhijit Sonawane have gone out from those dates and from those dates the mothers' and fathers' are not in their own houses which is factor confirming the doubt.

(iii) Ajay Nigam has submitted in Exhibit A.7 the FIR in murder case of Naroda Patia in which the address of Babu Bajarangi was mentioned(Ext. A.8). The Summons received from Ahmedabad Court to Ajay Nigam in which the address of Geeta Premji Patel was given that address and the address in Naroda Patia case are same and also Ajy Nigam has submitted CDs of new Channels together in one conversation programme Babu Bajarangi's man is seen with Geeta. Babu Bajarangi told before news channel that he has no connection with Geeta and his man with Fire Arm was seen in the same programme, which creates doubt about the conduct of Babu Bajarangi.

(iv) Ajay Nigam has submitted in Exhibit –A.10 and the complaint letters given to Sr.Police Inspector, Pant Nagar Police Station, Mumbai on 9th December, 2004 and to Dy. Police Commissioner, Division 7, Mumbai in Exhibit A.11, the phone no. with address and Prasant Samudre has submitted Exhibit B in which

the copy of application to Deputy Chief Minister Maharashtra State Mumbai on 30th April, 2005. The address in it and the address of the contact place at Naroda Ahmedabad (Mobile No. 79222819372 its address was STD and its owners name was Deepak Babubai Shah, near Uma High School, Naroda Ahmedabad, both addresses are same. Both girls went away from their husband suddenly and both contacted from same STD booth at Ahmedabad Naroda is not an accident, but preplanned. Out of the total enquiry the hand of Babu Bajarangi in these cases was clearly visible and found there is a substance in the complaints of Ajay Nikam and Prasant Samudre in Prima Facie.

(v) Ajay Nikam has submitted Exhibit A.10 to Senior Police Inspector, Pant Nagar Police Station, Mumbai and in Exhibit A.11 Deputy Police Commissioner, Div.7, Mumbai the copies of complaint letters are observed that when he went to Ahmedabad on 5th December, 2004 and he came out of the lodge to purchase tooth brush etc. one person arrived in black Scorpio car and shown Pistol to him along with his associates he forced him to sign on divorce papers and also the first information report which was submitted by Abhijit Sonawane at Kandala Police Station Exhibit C.7.5 to C-7.10. From those it was clear that near Kandala at Bangarwada his wife was taken away by using black Scorpio car. In the statement of Prasant Samudre his wife talked on phone from Ahmedabad and when contacted on the same phone, the person at phone told that those girls came in black Scorpio car. The said point which was kept in secret

during investigation was tallied with the statement of Bharati Patole. The said Black Scorpio car was used by Babu Bajarangi was told by all witnesses. In this manner in various cases the use of black Scorpio car is not an accident but it was a pre-plan. By these, it is clear that Babu Bajarangi is involved in this case.

The wife of Abhijit Sonawane when she was kidnapped she was pregnant but in the statement she stated that she was not pregnant but Abhijit gave the pregnancy test report copy (Exhibit C-5, C-6), by the said report it is a clear truth that she was pregnant. The similar evidence which was sealed was gone through and it was clear how abortion was conducted at Garbh Hospital at Ahmedabad with local Doctors. The FIR recorded at Khandala Police Station by Abhijit Sonawane, the first witness Babu Rajabhai Patel alias Babu Bajarangi was mentioned in the statement of Bhavana(Ex.C-7.95). In the said statement though Bhavna Said that she has gone with her own willingness to Ahmedabad after the complaint of Abhijit Sonawane the punchanama of the offence place and the discription of the car and during that period suffered injuries are clearly seen in the conversation programme recorded in CDs EXT C.8 and c.9. The statement of Bhavna is totally false and under pressure which is proved and no such evidence is required for it.

In above inquiries Reema Ribelow who ran away from the custody of Babu Bajrangi and her husband gave statement that they are under Terror of Babu Bajrangi and there lives are in danger from him the statement of Reema Ribelow it is clear that if a girl of Karva Patel

Community marriage with other caste boy, Babu Bajrangi can go to any extent to separate the girl from the husband and first how he takes her to Narroda and how he used pressure and cancelled her marriage and arranged her marriage with the boy of same caste it was very much clear.

The petitioners have stated in their statements again and again that Bharati Patole ran away from clutches of Babu Bajrangi and inquired with her in our office and she told that her life in danger in Mumbai and hence lady police inspector Kalpana Pawar was sent to her place and statements of her, her husband and her husband sister and after going through the statements Bharati it was clear how Babu Bajrangi used pressure to separate the girl from their marriage with other caste boys.

As a lady officer during her inquiry, she recorded statement of the girl and found that those girls are under some pressure. Those girls have not given statement with willingness. For this purpose the said girls be kept in lady organization for minimum 2 month separately from their mother father and relatives and those be taken into confidence then the real truth come out.

Out of the total inquiry and by studying the statements of Reema Ribelow and Bharati Patole who came out of the clutches of Babu Bajrangi it is clear that Babu Bajrangi brings the girls from separating them out of marriages with other caste boys into his community. In the case of Naroda Pathia murder, the main accused Babu Bajrangi is using Burkha of social service in the name of

Navachetan social institute and violating the basic right to live which is given by Indian Constitution, he misusing the draw back in various laws (using various techniques of pressure on major girls and making them to make false and wrong statement) and using in wrongful manner the provision in laws which is against the democracy of the country.

In all above cases the points were considered from the various angles of thoughts and recorded statements and evidences in inquiry and available document and CDs all are consider together, it is prima facie clear Babu Bajrangi and his Navchetan Sanstha both are involved in kidnapping the girls and breaking their marriages an in prima facie it is concluded that in all this cases the parent of girls and relative have expressed their consent and involvement therefore the FIR should be registered against Babubhai Rajabnhai Patel Alias Babu Bajrangi in above cases and he be arrested by the special investigating body is recommended by us so that all such type of conducts and behaviors will not be repeated in future.

Sd/-

A M Bhitre

Deputy Police Commissioner

Port Division Mumbai

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The Muzaffarnagar Model

Sreenivasan Jain (with inputs from Niha Masih) | [Opinion](#) | Updated: September 05, 2014 11:15 am IST

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(Sreenivasan Jain is Managing Editor NDTV 24x7 and anchors the ground-report show Truth-Vs-Hype)

Three days after Hindu-Muslim riots convulsed Muzaffarnagar in Western Uttar Pradesh in September last year, I went to meet Lalit Maheshwari, the VHP's local coordinator.

He told me that the anger that fuelled the riots had been building up for over a year because of 'Love Jihad' - increasing instances of organised gangs of Muslim men who concealed their religious identity to seduce Hindu women with a view to converting them. Around the same time, the VHP began a campaign against 'love jihad' in nearby towns and villages, even bringing in sadhus from Haridwar to preach to their audiences. When I asked for proof of this sinister conspiracy, he produced a booklet priced at ₹ 15 titled 'How to Save Our Women from the Terrorism of Love Jihad', containing a handful of case studies. Most had a familiar storyline: a young Hindu woman, lured into a relationship or into marriage by a Muslim man who had allegedly posed as a Hindu.

Those who got married often converted to Islam, he said, and had to be 'rescued', sometimes with the intervention of groups like the VHP. There was nothing in the

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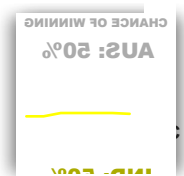
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booklet that suggested the widespread conspiracy of the title - no link between one case study and the other, no proof of organised groups at work.

Given this, it could well be argued that these are simply examples of young women (and men) falling in love and breaking the highly oppressive social taboos of Western UP, then being forced by family disapproval to break the alliance and return home. In such circumstances, where crossing a religious or caste boundary carries the risk of death, it's entirely plausible that problematic affiliations - caste, or in this case religion - are concealed from parents of both sides. I asked him if he had something more concrete, for instance proof of a high rate of conversion of Hindu women in his area. He didn't.

It's perhaps for these reasons - the highly-suspect evidence, the prospect of intervention in the fraught realm of the personal - that the Sangh Parivar's more mainstream affiliates had chosen to keep a wary distance from 'love-jihad'. But at some point, the needle shifted.

That point, according to Hukum Singh, who is from the BJP and represents the constituency of Kairana in Parliament, was the alleged gangrape in July 2013, a month before the riots, of a Dalit girl by four Muslim men in the town of Shamli, an hour west of Muzaffarnagar. The local BJP unit led by Hukum Singh held a large demonstration against the incident, accusing the police of inaction. The police lathi charged the protestors, and the Kairana case resonated across the region.

It is for this reason, Singh told me, that Muzaffarnagar exploded into violence a few weeks later when two Jat cousins, who had allegedly killed a young Muslim man named Shahnawaaz for harassing their sister, were killed in retaliation by a Muslim mob in the village of Kawwal.

But as [we reported then](#), the FIR filed by the Jat boys' family does not refer to female harassment. It mentions instead a clash between motorcycles of the two sets of boys which spiraled out of control.

In an interview to us, the young woman whose harassment had reportedly incited the two sets of killings, says she did not even know the Muslim man who had allegedly stalked her. These inconsistencies were drowned in a highly-charged, politically-driven clamour built around reinforcing the 'threat to Hindu women' version, which in turn stoked popular anger.

Even if the 'woman dishonoured' theory were proved to be true, how did a seemingly isolated instance of the harassment of a young woman in a village explain a planned 'jihad' against Hindu women? To this, Hukum Singh simply referred me back to the Shamli rape, which, while deplorable if true, has not been backed by any proof of conspiracy either.

In other words, the entry of the BJP into this sphere of Hindu-Muslim complexities has not brought in greater diligence; if anything, its backing has ensured that the 'love jihad' juggernaut has rolled outwards, using as its template the Muzaffarnagar Model: launch high-decibel, aggressive campaigns around individual instances of alleged Muslim misogyny. The higher the pitch, the better the ability to drown out any inconsistencies, and the easier to derive sweeping generalisations about

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any inconsistencies, and the ease with which we have sweeping generalisations about conspiracy. When confronted with pesky questions about proof, use each case to validate the other, a self-fulfilling chain reaction. So Shamli validates Muzaffarnagar which validates Meerut which validates Faizabad. (Some have even sought to reference the Rotherham trafficking scandal, in northern England: the quest for self-validation travels wide).

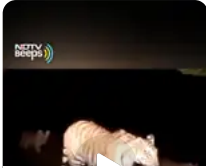
In another breath-taking leap of logic, a project centered around seduction-conversion has been reformatted as a Muslim conspiracy to inflict violence on Hindu women, sexual or otherwise. One may well ask how a conspiracy meant to lure women into marriage gains by raping, abusing or killing them. But then we have sailed far away from the shores of logic. We are now very much in the waters of cynical political calculation, the sole basis for the BJP's entry into the murky waters of 'love jihad'.

The notion of a Muslim conspiracy to commit acts of sexual violence /misogyny has been a potent way for the BJP to permeate popular imagination with two major anxieties around the Samajwadi Party regime: lawlessness and minority-pandering. And what better laboratory to test the waters with this new rebooted version ('Love jihad' 2.0?) than Western Uttar Pradesh, a region not known to be kind to its women, and where it's quite easy to see why a theory that outsources violent misogyny to another community would gain legs, no questions asked.







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It's another matter that as with the original episodes in Kawwal and Shamli, the 'marquee' cases that followed, around which newer, more vociferous claims are being made, rest on thin ground. In the case of the alleged gangrape and conversion of a young Hindu woman in Meerut in August this year, [multiple inconsistencies in her statement](#) have surfaced. But this has not led the BJP/VHP (now acting in tandem) to yield an inch from its position that this is unquestionably 'love jihad'. Instead, any doubts raised by the media have been viciously shouted down as undermining the credibility of a 'braveheart'. In Faizabad, the murder of a Hindu woman, allegedly by a Muslim man, saw BJP Vice-President Vinay Katiyar arrive the


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Next day, stoking an already-charged atmosphere by declaring the killing as 'love jihad'. Proof? None so far. The family of the victim, through their grief and anger, matter of factly stated that they did not know if their daughter knew the man accused of killing her, but that in their village there was never any tensions between Hindus and Muslims, and that the entire matter, while shattering, had in their view no 'Hindu-Muslim' dimension. It was, in their eyes, a case of a horrifying assault on their daughter by a man.

This is the other damaging legacy of 'love jihad': at a time when the Prime Minister from the Red Fort held men - all men - accountable for crimes against women, and spoke of a moratorium on communal tension, some of his party colleagues (and ideological affiliates) have embarked on an aggressive campaign that does exactly the reverse - selectively demonise one community as violent sex predators in the most communal terms.

The Meerut episode only exacerbated this rhetoric. When we looked at data for crimes against women in Meerut Range (comprising of six districts), it showed that in 2013, it recorded the most rape and dowry cases and the second-highest in kidnapping of women in Uttar Pradesh. We then asked the administration in Meerut to give us a break-up of rape cases by the religious identity of accuser and victim for the same administrative region. Given the sensitivities surrounding the identity of victim in cases of sexual violence, we had to depend on them to collate the data. They could initially only give us the breakup for Meerut district. [According to the information they shared with us](#), 37 cases of rape were registered in Meerut district since the beginning of this year. (The data was simply of cases registered in which sections pertaining to rape were applied. No names of accused or victims were shared with us). Of the 37, in 30 cases (81 %) the accused were Hindus, in 7 (19 %) they were Muslims. At a glance, this belied the Sangh Parivar claim of an epidemic of organised rapes by Muslim men in Meerut.

Two days later, the administration shared with us data for the same period (January - August 2014) for Meerut Zone, comprising the nine districts of Western UP. There were 334 cases in all. This time, they had broken up the data into cases of Hindu victim and Muslim accused (25 cases). and Hindu accused and Muslim victim (23 cases). The number of cases of Muslim accused and Muslim victim was 96, and Hindu accused and Hindu victim was 190. [We reported this](#) as a continuation of what the earlier data demonstrated: that there is no proof of a Muslim-perpetrated rape epidemic. If anything, the numbers show that the greatest threat to Hindu women, are, broadly Hindu men, (as Muslim men are to Muslim women) - a commonsense conclusion now borne out by numbers. Or perhaps not.

In [this baffling, lengthy piece](#) the columnist Rupa Subramanya chides us for drawing misleading conclusions on the basis of raw data. We should have - as she does - converted the data into percentages of population for both communities, which demonstrates that Muslims have a greater propensity to rape than Hindus. This, according to her, is the BJP's case to begin with. Ergo, we have helped the BJP. I was initially tempted to ignore the post, given the writer's propensity to engage on twitter in highly offensive terms, a habit that sits at odds with her need for intellectual validation.

But given the wide circulation the blog received it seemed contingent to briefly point

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 out the latest songs, only on JioSaavn.com. out the specious logic underlying it. We didn't feel the need to parse the data on the basis of propensity because that is not - contrary to the writer's belief - the BJP/VHP's case. Nowhere do the proponents of 'love jihad' even remotely acknowledge that both communities are guilty of terrible crimes against Hindu women, but that one has a greater *propensity* to commit those crimes than the other. (Unless the writer is privy to BJP/VHP speeches along the lines of "our men are raping 'our' women. But that's just raw data. The only thing to remember is that their men are raping our women at a higher propensity. So it's all good. Also, love jihad is real.").

The entire strategy is to amplify cherry-picked instances of sexual violence - where the religious calculus is Hindu victim and Muslim accused - to insinuate that virtually the sole threat to 'our bahu-betis' is a conspiracy by 'their' men. To us, the raw data was enough to raise questions about this premise. The only number crunching we may have overlooked is this: of the total 334 cases, there are 215 cases where the victims are Hindu (women), of which in 190 cases - 88 % - the accused are fellow Hindus. I will leave it to the more data-literate to judge which community poses the real threat to western UP's 'bahu - betis.'

Before this prompts another extensive lesson on statistical literacy, we are not, as the author seems to suggest, using the data to arrive at a definitive conclusion. Which is why our reporting of the numbers is not in a vacuum but in the context of an ongoing attempt to scrutinise both the specific instances used to bolster the existence of 'love-jihad', as well as the wider conclusions drawn from those instances. Which is why our headlines say "claims don't add up", or "contradicts claims", not "it's official: 'love-jihad' is not real".

On the other hand, the BJP feels the need for no qualifiers. And yet the writer's conclusion that "we simply don't have the quality of data.. to conclusively either confirm or refute claims that one community or the other has a greater propensity to commit violence" has not led to a similar 10,000 word demand for post-facto rigour from the ruling party, whose (by her own admission) baseless pronouncements are leading to a very real, very damaging impact on public safety and social amity.

On the upside, I learnt a new term - regression analysis. The internet told me this is 'used when you want to predict continuous dependent variable from a number of independent variables'. Personally, 'regression analysis' struck me as a wonderful title for an enquiry into why a section of the BJP is sliding backwards into 1990's-era rhetoric of Hindu grievance.

As of now, the indications of a BJP course correction on 'love jihad' are confusing. While no one from the higher echelons of the party has spoken out publicly against the state unit's adventurism, it's widely held that cancelling the insertion of 'love jihad' into the resolution of the UP unit of the BJP's executive meet was an indication of the high command's tacit disapproval. And yet, I received a call earlier this week from someone in the VHP about a coordination meeting of all Sangh Parivar groups in Muzaffarnagar - BJP, RSS, VHP, Bajrang Dal and so on - to assign roles to each outfit. It was decided that the BJP would not leap into communally-charged protests on issues 'love jihad', because it has led to too many of the its leaders being slapped with police cases. But the BJP would support the VHP in

The Muzaffarnagar Model by Sreenivasan Jain (with inputs from Niha Masih)
 such crusades 'from behind'. To quote his exact words, 'woh hamara peeche se
 support karenge.'

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COMMUNALISM

Police Stop Inter-Faith Marriage in Lucknow, Despite Couple and Families' Consent

The case does not qualify under the new law as there was no conversion involved, but that did not stop the police from citing it.



Representative image. Photo: Unsplash/Sourabh Virdi



The Wire Staff



COMMUNALISM GOVERNMENT RIGHTS 04/DEC/2020

New Delhi: In a stark example of how the Uttar Pradesh government and police can misuse the new anti-conversion law in the state, an inter-faith couple in Lucknow was stopped from getting married on Wednesday despite having consent from both families.

According to the *Indian Express*, police received a complaint

rituals, the report says. The police reached the marriage site just as the final preparations were on, and said that the couple needs the district magistrate's permission before going ahead.

“The family of the girl is Hindu, while the boy's family is Muslim. Both of them were getting married with each other's consent and there was no coercion of any type. Some representatives of Hindu Yuva Vahini objected to the wedding and we stopped the wedding and told them that under the new conversion law, you can only get married if you have notified the District Magistrate for the specified period of time. We told them that it should not seem that there is pressure to convert,” Para police station SHO Triloki Singh told the *Indian Express*.

Neither the bride or groom had expressed any immediate desire to convert, Singh added, and both said they wanted to get married.

Lawyer Vakasha Sachdev, however, **pointed out on Twitter** that for multiple reasons, this case did not even qualify under the new anti-conversion ordinance, which the police cited while stopping the wedding. For instance, the law says that a complaint can only be filed by an aggrieved person – which includes family members of the person allegedly being forced to convert. A group like the Hindu Yuva Vahini – with no personal connection to the individuals – does not qualify.

Also read: Anti-Conversion Laws See Love as a Hate Crime



In addition, there was no conversion involved at all, just a marriage. So permission from the district magistrate is not required under the anti-conversion law. “In this case, Muslim man had agreed to Hindu rituals without yet converting. While this meant marriage registration may not have been possible yet, [there was] no impediment to the ceremony,” Sachdev continues.

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of either would require DM permission.

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If the conversion process wasn't later followed, then again, the marriage could be declared nullified.

But not yet. And also not on the complaint of unrelated goons from the Hindu Yuva Vahini.

The police handing out copies of the ordinance need to read it themselves.

6/n

10:43 AM · Dec 4, 2020



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See Vakasha Sachdev's other Tweets

While the law itself is severely under question, the UP police and right-wing Hindutva organisations appear to be taking it a step further to stop inter-faith marriages altogether. This is something observers, including retired IPS officer N.C. Asthana, had seen coming. **Writing in *The Wire***, Asthana said, “The **UP law** is teeming with legal blunders that strongly indicate the real intent of the law is to harass people so much that conversion *per se* is discouraged.”

Reports have already started coming in to show that the new law is perhaps being used to harass Muslim men and inter-faith couples. The first arrest under the law took place just five days after it was promulgated, and locals of the area **believe the case was filed under police pressure** as the matter was already settled.

In **another incident**, a 21-year-old Muslim man and 21-year-old woman who had come to an Aligarh court to register an inter-faith marriage were taken away by the police, and the man allegedly roughed up.

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After 'love jihad' law, Uttar Pradesh to now withdraw 4 decade-old incentive scheme for interfaith marriages

India



Times Now Digital

Updated Dec 02, 2020 | 14:35 IST

The Intercaste and Interfaith Marriage Incentive Scheme was brought into effect in 1976 by the national integration department of the then Uttar Pradesh government.

Uttar Pradesh Chief Minister Yogi Adityanath. | File image | Photo Credit: PTI



KEY HIGHLIGHTS

Decades later when Uttarakhand was carved out of UP, the incentive scheme was retained

Now, even Uttarakhand is mulling a withdrawal of the plan

Last year, there were 11 beneficiaries from the scheme who got Rs 50,000 each

Lucknow: After bringing in an ordinance against the practice of forced conversions on the pretext of marriage, popularly called by the Bharatiya Janata Party as 'love jihad', the Uttar Pradesh government is now planning to roll back a 44-year-old scheme that offered incentives for interfaith marriages.

The Intercaste and Interfaith Marriage Incentive Scheme was brought into effect in 1976 by the national integration department of the then Uttar Pradesh government.

Decades later when Uttarakhand was carved out of UP, the incentive scheme was retained. Now, even Uttarakhand is mulling a withdrawal of the plan.

In order to avail the benefits under this scheme, an interfaith couple would have had to apply to the district magistrate within two years of the wedding and after verification, the couple is provided with a sum of money.

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However, back in 2017, the UP government brought out a rule that if the interfaith couple converted after they got married, they would then lose the incentive.

Last year, there were 11 beneficiaries from the scheme who got Rs 50,000 each, the *Times of India* said in a report. However, there have been no cases in 2020 and four applications that came in are still pending.

'Love jihad' law

The UP Cabinet on November 24 cleared the 'love jihad' ordinance – Prohibition of Unlawful Conversion of Religion Ordinance 2020 – shortly after the Allahabad High Court upheld the right to freedom of choice of individuals, quashing its own previous order wherein conversion for the sake of marriage was not acceptable.

Three days after that, Uttar Pradesh Governor Anandiben Patel promulgated the law, giving it a more concrete power.

As per the new law, a person can get be imprisoned between one-five years if he/she is convicted of carrying out forceful conversions for marriage. Forced conversion will hereon be a non-bailable offence.

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Uttarakhand mulls ending Rs 50,000 monetary benefit for inter-faith marriages after 'controversy'

Many other BJP-ruled states, including Haryana, Madhya Pradesh, Himachal Pradesh, Uttar Pradesh and Karnataka, are making laws to prevent alleged 'Love Jihad'.



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Uttarakhand is one of the first states in the country to have passed a law against 'Love Jihad'. (Representational Image)

By Vineet Upadhyay

Express News Service

DEHRADUN: The Uttarakhand government, which is also one of the first states in the country to have passed a law against 'Love Jihad', is planning to end monetary benefits extended for inter-faith marriages in the state.

This move comes after the state government got into a controversy due to a **press release issued by the social welfare department** in November that encouraged newly married inter-faith couples to avail monetary benefits of Rs 50,000.

State cabinet minister and spokesperson for the government Madan kaushik said, "With Uttarakhand Freedom of Religion Act, 2018 the scheme has already become null and void. It seems the press release was issued amidst confusion which will be sorted soon."

Last month, the press release dated November 18, in Hindi, by the social welfare officer of Tehri district stated, "To promote communal harmony and social unity, interfaith and inter-caste marriages are of great importance as it will help in bridging gaps among different communities."

READ OPINION | Why fuss over 'Love Jihad'?

The release further said that to promote such marriages, the social welfare department gives an incentive of Rs 50,000.

Following this, Uttarakhand government faced flak for promoting 'Love Jihad'. To this, an inquiry was ordered by Chief Minister Trivendra Singh Rawat, headed by the chief secretary of the state.

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The officials added that scheme has been since the time when Uttarakhand was part of Uttar Pradesh.

The actual incentive under the scheme was Rs 10,000 which was increased to Rs 50,000 in 2014 by the then Indian National Congress (INC) government through an amendment in the Uttar Pradesh Antarjatiya/Antardharmik Vivah Protsahan Niyamawali, 1976.

Many other BJP-ruled states, including Haryana, Madhya Pradesh, Himachal Pradesh, Uttar Pradesh and Karnataka, are making laws to prevent alleged 'Love Jihad'.

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Maharashtra plans to bring law to encourage inter-caste, inter-religion marriages

The Maharashtra government will also provide special concessions such as fee waiver to the children born out of intercaste and inter-religion marriages, he said.

By: **PTI** | Mumbai | May 6, 2018 1:57:36 pm

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According to the National Crime Record Bureau (NCRB), Maharashtra ranks fourth in the list of honour killings in the country. (Representational)

The Maharashtra government is planning to enact a law to encourage intercaste and inter-religion marriages and focus on giving protection to such couples, in the backdrop of instances of honour killing.

The couples – where spouses are from different religions or castes – have to face various problems, including social boycott and the threat of honour killing, state social justice minister Rajkumar Badole told PTI. “Hence, besides other aspects, the law will focus on what kind of protection can be given to the couples who are facing threat to their lives,” he said.

According to the National Crime Record Bureau (NCRB), Maharashtra ranks fourth in the list of honour killings in the country. The NCRB, in its report ‘Crime in India 2016 Statistics’, stated that out of a total 69 such cases reported to it that year, eight people were killed in the name of ‘honour killing’.


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Another lacunae in the existing laws is that if one of the spouse is from a backward community and another from the general category, the child born to them is deprived of the benefits of reservations and other concessions (given to the backward classes), Badole said. “The government intends to provide to the children of such couples the benefits that one of their parents is already getting,” he said.

Apart from that, the government will provide special concessions such as fee waiver to the children born out of intercaste and inter-religion marriages, he said. “There are also instances where such couples face social boycott. They will be given protection,” he said. The minister said while there is already a Special Marriage Act (for inter-religious marriages), it has various lacunae that need to be addressed.

The state government will speak to law experts from the Muslim community to ensure that the proposed law does not interfere with the Sharia law, he said. There are various schemes that promote intercaste and inter-religion marriages but they are not properly implemented, he noted. “For instance, the Dr Ambedkar Foundation in Delhi gives Rs 2.5 lakh for intercaste and inter-religion marriages. Similarly, we are also considering to provide funds to such couples to start a new life,” he said.

A few days back, the minister held a review meeting of the committee constituted to frame the law and asked it to prepare the draft in the next two-three months. The inter-state marriage law committee chairman, C S Thul, said letters have been sent to all district superintendents of police to seek information about the number complaints pertaining to problems faced by inter-caste couples. “Protection needs to be given to such couples to encourage more people (for intercaste and inter-religion marriages) in future,” Thul said.

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ANNEXURE -P-18

[Politics \(/articlelist/Politics\)](/articlelist/Politics) [India \(/articlelist/India\)](/articlelist/India)

Right to Love Campaign Protecting Interfaith and Intercaste Couples in Rural Maharashtra

[\(/right-love-campaign-protecting-interfaith-intercaste-couples-rural-maharashtra\)](/right-love-campaign-protecting-interfaith-intercaste-couples-rural-maharashtra)

The Right to Love campaign run by Sushant Asha and Abhijit K, both journalists cum social activists, helps couples facing opposition to avail protection by police, legal help to get marriage registered, counselling to deal with stress and also in finding job opportunities.

Varsha Torgalkar (</author/Varsha Torgalkar>) 24 Nov 2020



Pune: Hussain, a 35-year-old man and his wife Shradha, a 33-year-old upper caste Hindu woman, believe interfaith or intercaste couples should not pay attention to threats or emotional blackmails and should date or marry. They married against the wishes of both their families in 2015 and were successful in changing their parents' hatred, even though it took quite a few years after their marriage.

Hussain (name changed), a resident of Agra, and Shraddha (name changed), a resident of Jhansi, Madhya Pradesh, are working in Pune and started dating in 2012. Shraddha said, "My parents started to pressure me for marriage when they had a doubt that I was dating somebody. They



had no idea that I was dating a Muslim guy. We decided to marry for safety as they would not do anything if I am legally married. We also found about the Right to Love campaign.”

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RIGHT TO LOVE CAMPAIGN

The Right to Love campaign run by Sushant Asha and Abhijit K, both journalists cum social activists, helps couples facing opposition to avail protection by police, legal help to get marriage registered, counselling to deal with stress and also in finding job opportunities.

As three states- Haryana, Uttar Pradesh, and Karnataka—are mulling over a b
(<https://thewire.in/communalism/love-jihad-laws-muslim-exclusion-ulterior-motive-hindutva>)a
(<https://thewire.in/communalism/love-jihad-laws-muslim-exclusion-ulterior-motive-hindutva>)n
(<https://thewire.in/communalism/love-jihad-laws-muslim-exclusion-ulterior-motive-hindutva>) on
interfaith marriage, the significance of the work done by RTL becomes even more stark. Right to Love has so far helped in over 50 marriages that included three interfaith, while the remaining were inter-caste marriages across Maharashtra.

Detailing the help they received from the RTL campaign, Hussain told *NewsClick*, “We had no idea that interfaith couples had to register marriage under Special Marriage Act, 1954
(http://legislative.gov.in/sites/default/files/A1954-43_1.pdf). We married in April 2015 with the help of Sushant and Abhijit. We ran away to Dubai due to fear mostly from Shraddha’s family and returned after a year to Pune. Luckily both my and her family have accepted us now.”

Sushant said, “To go against parents takes a toll on their mental health. We have to counsel couples and offer them support. Parents in the rural areas can even react violently, going to the extent of killing the couple. In such extreme cases, we give complaints to police and seek protection. Police have been helpful in this process.”

He added, “We also have to explain the legal processes (to the couple). For example, if the couple is Hindu it can go for Hindu Marriage Act, 1955. We also try to get jobs for them though its not always possible. We don’t have any funding and our counsellors, lawyers and friends help us.”

Also read: The Interfaith Marriage of Nusrat Jahan, and Deoband’s Fatwa
(<https://www.newsclick.in/Interfaith-Marriage-Nusrat-Jahan-Deoband-Fatwa>)

Inter-caste and inter-faith marriages in India





(12)



Only 2% of marriages in 2019 were registered under the Special Marriage Act for interfaith couples in Delhi as per one survey (<https://www.news18.com/news/india/589-interfaith-couples-registered-in-delhi-in-2019-survey-2398661.html>)

over-19000-registered-in-delhi-in-2019-survey-2398661.html While, only 5.8% of marriages are intercaste as per the 2011 Census (https://en.wikipedia.org/wiki/Inter-caste_marriages_in_India) despite many schemes for its promotion.

Ravindra Sathe (name changed), a driver for a local corporate in Pune, shivers even after five years as he recalls how he, along with his girlfriend, had to be on the run from one city to another due the fear of getting killed by her family. Ravindra, belonging to a scheduled caste, was a resident of Sangli in Maharashtra when he started dating Shruti, who belonged to upper caste, eight years ago.

"When her family realised we were dating, they decided to get her married forcefully in 2015. Shruti's family is rich and her uncle was an MLA, so they decided to marry her off in order to save the reputation of her family. We then ran away," Ravindra said.

"Her family could have killed us so we went to Tryambkeshwar, then Hyderabad and went to Varanasi. People would understand we were not locals and had run away from our homes. We were fed up as we felt Maharashtra is a much safer place to live. Luckily for us, one ticket checker in the railways who was from Maharashtra, realised our situation and gave us Rs 1,000, telling us to go back. I was also tired after running for four consecutive months," said.

He continued, "Meanwhile, a friend shared the contact of Right to Love activists. Sushant and the team assured me that they have lawyers, doctors in the team and I should not worry. Their counsellors explained to us well why we should not worry about the fear of getting killed. They helped me to get a job as a driver for a school bus. Now I am doing good. Her mother and brother talk to us but father is still angry."

Commenting on the futility of any act to stop conversion after marriage—which is being demanded by pro-Hindutva groups--Shansuddin Tamboli of the Muslim Satyasodhak Mandal told *NewsClick*, "Love Jihad like Cow Slaughter Prevention Act are fabricated concepts. Pro-Hindutva organisations use them to polarise the society which is against the Constitution. After Cow Slaughter Prevention Act, mob lynching incidents have gone up. We already have anti-conversion act to stop forceful conversion then what is the use of this? In the same way lynching or attacking on Muslims would go up after this act comes into existence." MSM has also helped many interfaith couples to marry.

He added, "Instead, there should be schemes to promote interfaith marriages in order to integrate the society. Right to Love is one of the organisations working towards creating society envisioned by Mahatma Jyotiba Phule, Dr Babasaheb Ambedkar. Many such organisations should arise to support the interfaith and inter-caste couples who are in need of help."



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special marriage act (/articles/special marriage act)

Love Jihad (/articles/Love Jihad)

Hindutva (/articles/Hindutva)

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GOVERNMENT OF INDIA **ANNEXURE -P-19**

LAW
COMMISSION
OF
INDIA

Conversion/reconversion to another religion - mode of proof

Report No. 235

December, 2010

Justice P. V. Reddi

(Former Judge, Supreme Court of India)

(R)

Chairman

(O)

Law Commission of India

New Delhi

Tele: 2301 9465

2338 4475

Fax: 2379 2745 (R)

D. O. No. 6(3)/185/2010 – LC (LS)

December 27, 2010

Dear Hon'ble Minister Dr. M. Veerappa Moily,

Sub: Conversion/reconversion to another religion –
mode of proof

I am forwarding herewith the 235th Report of the Law Commission of India on the above subject.

In a matrimonial appeal disposed of by the Kerala High Court, the question was whether the wife who applied for divorce with mutual consent under Section 13B of the Hindu Marriage Act, 1955 satisfactorily proved the factum of conversion to Hindu religion. *Inter alia*, the Family Court held that the applicant-wife who was Christian by birth has not established that she had converted herself to Hindu religion and there was no adequate proof of valid solemnization of marriage as per Hindu customs and rites.

The High Court set aside the said findings and directed *de novo* consideration of the issue after giving further opportunity to the applicant to adduce appropriate evidence. The observations made in paragraph 15 of the judgment are extracted in the opening paragraph of the enclosed Report. In paragraph 16 of the judgment, the Registry was directed to forward a copy of the judgment to the Law Commission of India, drawing the attention of the Commission to paragraph 15.

Office: I. L. I. Building, Bhagwandas Road, New Delhi – 110 001

Residence: 1, Janpath, New Delhi 110 011

E-mail: pv_reddi@yahoo.co.in

Accordingly, the subject was taken up by the Law Commission of India for consideration. After I assumed the office, the study was undertaken and a consultation paper was circulated for getting the views of the public, while expressing the *prima facie* view of the Law Commission. Certain representations were received and the same have been adverted to at paragraph 15 of the Report. The Commission after due deliberations has come to the conclusion that a declaration followed by confirmation before a registering authority should not by itself be treated as proof of conversion and secondly it would be highly inappropriate to prescribe by way of legislation the details of ceremonies and formalities to be gone through for conversion or the manner in which conversion is to be proved in a Court of law. At the same time, the Commission felt that the suggestion of the High Court should be accepted to a limited extent so as to afford opportunity to those who would like to have documentary evidence to substantiate the plea of conversion. The Commission has made it clear that filing of declaration and recording thereof should not be an indispensable proof of conversion. It should only be made optional so that the converted person will be enabled to have documentary proof to establish conversion/reconversion as and when necessary. The Commission has also made it clear that the documentary proof ought not to be considered as conclusive proof in as much as the Court has necessarily to go into the question whether conversion was true, and voluntary. Accordingly, recommendations are made at paragraph 16 and 17 of the Report. The Commission has expressed the view that in order to give effect to the simple recommendation which does not conflict with any law in force, statutory amendments to personal laws are not required. The Central Government can issue appropriate instructions to the concerned authorities of the UTs and the States.

With regards,

Yours sincerely,

(P.V. Reddi)

Dr. M. Veerappa Moily
Hon'ble Minister for Law and Justice
Government of India
New Delhi – 110 001

Re: Conversion/reconversion to another religion - mode of proof**Introduction: Observations of Kerala High Court**

1. A Division Bench of Kerala High Court, in a matrimonial case in Betsy and Sadanadan Vs Nil (Mat Appeal No. 339 of 2009) while dealing with a joint application moved by the parties for dissolution of marriage under Section 13B of the Hindu Marriage Act, 1955 examined the issue whether in the absence of any specific procedure prescribed under pristine Hindu law, custom and statute governing conversion, what the approach of the court should be and whether there is a need for legislative intervention so as to make the law simple and user - friendly. The High Court invited the attention of the Law Commission to the observations made in paragraph 15 in order to address the need for legislation. It was observed thus by Justice R. Basant in para 15 of the Judgment:

“We must, in this context, note that the stipulation in clause (c) of the Explanation to Section 2(1) of the Hindu Marriage Act which shows that a conversion or re-conversion to Hinduism can take place and the absence of any stipulations of law or specific recognized practices to facilitate such conversion is causing great difficulties to the parties. It should not be impossible for the legislature to prescribe the methods by which a person without any difficulty can effectuate such conversion. He should not be left before courts to adduce exhaustive evidence to prove such conversion. The law which recognizes such conversion must also be in a position to prescribe how the parties, without the necessity to get involved in unnecessary and time consuming litigations, can declare to the world such conversion. Appropriate stipulations of law appear to be necessary on this aspect in respect of conversions to and from all religions. Simple statutory stipulation applicable for all religions of filing of an affidavit of solemn declaration before a registering (statutory) authority (who must give the declarant sufficient time to dispassionately contemplate and confirm the declaration) and acceptance and recording of such reconfirmed declaration by the

authority in a register maintained under the statute for that purpose after lapse of a stipulated period and after calling for and hearing of objections if any of any interested party, will make the procedure simple, user friendly and less cumbersome. Such stipulations will save many a citizen like the petitioners herein of the tedious obligation to get involved in time consuming and unnecessary legal proceedings and litigation. Religious conversions may appear to many in Indian mindset to be unnecessary, puerile and negation of the very concept of respect for both religions as also the followers of such religion. But certainly, the freedom of faith guaranteed the Constitution may not justify the negation of the right to pursue the chosen faith, by conversion where necessary.”

The High Court observed that easy identification of the religion of a person in the event of a controversy does not appear to be possible even with the help of the decided cases. The Bench then observed in paragraph 13 as under:

“But the courts cannot throw their hands up. Resolve they must, in the event of controversy or conscientious and objective doubt (even when parties raise no controversy) of the question whether there was conversion or reconversion to Hinduism in a given case as asserted by the litigant. We are certain that it must be possible for the court below with the help of the above guidelines, on the basis of evidence presently available and further evidence that may be adduced, to decide whether the first appellant has become a Hindu by conversion under explanation (c) to Section 2(1) of the Hindu Marriage Act. We may broadly indicate that an assertion of the 1st appellant that she had, prior to her marriage, embraced Hinduism will have to be given due weight. She can explain the assertion and satisfy the court that the tests indicated above have been satisfied by her in accepting conversion to Hinduism. She can prove the conduct of having her marriage with the 2nd appellant solemnized in accordance with Hindu religious rites and ceremonies. She can certainly show before the court that she had, after such conversion, been worshipping Hindu Gods. She can also adduce evidence to show that after such conversion, she has held out to the world that she is a Hindu. All these circumstances, if established, we find no reason why the uncontroverted

assertion of the appellant that the 1st appellant had become a Hindu by conversion before marriage cannot be accepted and the marriage performed in accordance with Hindu rites cannot be accepted as valid under the Hindu Marriage Act by the Court below.”

With the aforesaid observations, the High Court remanded the Case to the lower court and allowed the parties to adduce further evidence and also to amend their pleadings, if necessary.

2. The Law Commission of India with a view to address the limited question whether a particular mode of proof of conversion as suggested by the High Court should be statutorily prescribed, having made a preliminary study and recorded its *prima facie* view, invited the views of public on the said issue. Certain suggestions have been received which would be adverted to at the appropriate stage.

Freedom to profess and practise religion of one's choice

3. The freedom of conscience and the right to profess, practise and propagate religion is enshrined in Art.25 of the Constitution. The equality of all religions is expressly recognized by Art.25 thereby emphasizing the cherished ideal of secularism. The expression ‘practice’ is concerned primarily with religious worship, ritual and observations. Propagating the religion connotes the right to communicate the religious beliefs to others by expounding the tenets of that religion. Of course, in the name of propagation, no one has a right to convert a person to another religion under pressure or inducement (vide *Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908). Religious practices are as much a part of religion as religious faith or doctrines (vide *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thiratha Swamiar of Shirur Mutt*, AIR 1954 SC 282). The fundamental right to freedom of conscience and the right to profess, practise and propagate a religion is subject to the

considerations of public order, morality and health. Clause (2) of Art.25 preserves the power of the State to make a law regulating any economic, financial, political or other secular activity which may be associated with religious practice. Art.26 gives effect to the concomitant right of the freedom to manage religious affairs and this right is again subject to public order, morality and health. Articles 25 and 26 undoubtedly extend to rituals also and not confined to doctrine. It is well-settled that the freedom of conscience and the right to profess a religion implies freedom to change the religion as well. It is pertinent to mention that Art. 18 of the Universal Declaration of Human Rights specifically lays down that the freedom of conscience and religion includes freedom to change the religion or belief. The right to freedom of conscience thus implies the individual right of a person to renounce one's religion and embrace another voluntarily.

4. The change from one religion to another is primarily the consequence of one's conviction that the religion in which he was born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness.

5. Any discussion on conversion generates thoughts on religion and religious faith. There is no precise definition of religion. 'Religion', it is said, is a matter of faith and belief in God is not essential to constitute religion. In *Shirur Mutt case* (AIR 1954 SC 282), Mukherjee, J made the

following pertinent observations on religion and Hindu religion in particular:

“Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress.” (para 18)

The saint and great philosopher Swami Vivekananda said:

“Religion as it is generally taught all over the world is said to be based upon faith and belief and in most cases consists only of different sets of theories and that is the reason why we find all religions quarrelling with one another. These theories are again based upon faith and belief.”

Sri M.N. Rao, former Chief Justice of H.P. High Court and presently Chairman of National Commission for Backward Classes, after referring to the above thoughts in his article on ‘Freedom of Religion and Right to Conversion’ (2003) made the following pertinent observations:

“Right to conversion connotes individual right of a person to quit one religion and embrace another voluntarily. This kind of change from one religion to another religion must necessarily be in consequence of one’s conviction that the religion in which he was born into has not measured up to his expectations, spiritual or rational. Sometimes it may also be the result of losing faith in one’s own religion because of the rigidity of its tenets and practices. Sometimes one may even lose total faith in the very concept of the existence of God and turn to Atheism. A change of religion, a consequence of any of the above reasons, falls within the ambit of the “Right to Conversion”.

Conversion –nature of and essentials to be proved:

6. Conversion like a marriage is a solemn act. Conversion from one religion to another has far reaching consequences –social and legal. It affects succession, marital status and also the right to seek elective office. Divorce can be granted on the ground that the spouse has changed the religion (vide Section 13(1)(ii) of the Hindu Marriage Act). 'Upon conversion a person may be governed by a different personal law. The right to contest in elections from a constituency reserved from SCs / STs might be lost if the person who has changed the religion happened to be a member of Scheduled Caste or Tribe. Thus, the event of conversion is of critical importance from the point of view of rights and disabilities of a convert.

7. Conversion cannot be treated as an event which can be achieved through a mere declaration – oral or writing. At the same time, no particular formalities or ceremonies are required according to the law declared by Supreme Court. In fact, no such ceremonies are specifically prescribed in any religious texts or precepts, though certain ceremonies like 'Suddhi' (in the case of Arya Samajists) and baptism (in the case of Christians) are gone through in practice in some cases. Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary. The subsequent conduct of the converttee is also important in reaching the conclusion that a conversion in its true sense had taken place and there was genuine conversion. The evidentiary facts which establish conversion have been time and again stated by the Supreme Court, while observing that no specific ritual or ceremony is required. Satisfactory evidence of conversion which has always been insisted upon by the Courts is necessary especially when we hear plethora of complaints of manipulated conversions for extraneous reasons or as a result of undue pressures.

Views of the Commission on the crucial question and relevant case law:

8. In the Commission's view, statutory prescription of procedure to establish conversion or nature of proof required is neither desirable nor practicable. Normally, a statute does not deal with the details which lie within the realm of appreciation of evidence. Any such enumeration touching on the quality of evidence to be adduced would result in more complications. A declaration of the nature suggested by the High Court cannot be a substitute for the tests laid down in decided cases for entering a finding of conversion. In fact, it does not appear that the High Court intended to say that the declaration followed by confirmation should be treated as a conclusive evidence of conversion/reconversion. The High Court apparently intended that the declaration followed by subsequent confirmation before the registering authority would serve as weighty documentary evidence, thereby minimizing the scope of controversy. There is another angle from which the said observations of the High Court have to be viewed. The declaration and registration thereof, if made the only mode of proof, many *bona fide* converts may be handicapped in proving the conversion merely by reason of failure to adhere to the procedure of registration. Moreover, a question may arise as to what purpose will such a procedure serve, where there are objections from some quarters – whether they be *bona fide* or *mala fide*? Should it be left to the Registration Officer to deal with those objections and record a finding? Is it proper for the Registration Officer to take a decision on the *bona fides* of conversion on the basis of facts existing at that initial stage? These questions defy a satisfactory answer if the declaration and confirmation should be treated as the conclusive proof of conversion.

9. The High Court's observation that the proof in respect of conversion should be simplified and credible documentary evidence could be made available to those who are called upon to prove the factum of conversion is not without merit. It stems from an anxiety to avoid prolonged litigation and unnecessary controversies. But, the issue has to be viewed from a larger perspective keeping in view the socio-economic conditions, the practical difficulties in implementation and the spurious claims that are quite often advanced. The Courts including Supreme Court have consistently held that the law does not require any particular ceremony or ritual for conversion, but what is necessary is a *bona fide* intention to convert to another religious faith accompanied by conduct unequivocally expressing that intention. The satisfaction of the Court on this aspect should necessarily be present and the filing of declaration of conversion before a prescribed authority is one of the important aspects that aids the Court in reaching such satisfaction, but that should not be the sole criterion.

10. It has been held in a number of decided cases including the pronouncements of the Supreme Court that no particular formalities or religious rituals or ceremonies are necessary to bring about conversion or reconversion. In the case of *Punjabrao v. Dr. D.P. Meshram and others* (AIR 1965 SC 1179), it was observed that the presence of a Bhikku on the occasion of a function held for conversion of Hindu Harijans into Buddhism and compliance with particular rituals is not necessary; so also, the signature of a converted person in a register for conversion is not obligatory. In *Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor)* (AIR 1971 SC 2352), the principle was reiterated that no formal ceremony of purification or expiation is necessary to effectuate conversion. So also in the case of *S. Anbalagan v. B.*

Devararajan and others (AIR 1984 SC 411), the Supreme Court examined 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. The Karnataka High Court observed in *Sujatha v. Jose Augustine* (II (1994) Divorce & Matrimonial Cases 442) that to be a Christian, one must truly profess the Christian faith and the fact that one has undergone the ceremony of baptism may not by itself be sufficient to hold that he or she has become a Christian. The fundamental thing to be established before one can be held to be Christian is that the person concerned truly believes in and professes the Christian faith.

10.1 The test of conversion has been put thus by the Supreme Court in *Perumal Nadar v. Ponnuswami* (*supra*).

”A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion”. (para 6)

The Supreme Court also observed “in our judgment the finding of the courts below that Annapazham was converted to Hinduism before her marriage to Perumal is amply supported by evidence.”

10.2 In *Kailash Sonkar vs. Smt. Maya Devi* (AIR 1984 SC 600) the Supreme Court while dealing with a case of reconversion adopted a similar approach, as seen from the following observations:

“In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the

reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste.” (para 30)

It was further clarified:

“In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition if no exception or protest is lodged by the community members, in which case the caste would revive on the reconversion of the person to his old religion.” (para 30)

10.3 We may also refer to the decision of Kerala High Court in *Sapna Jacob, Minor vs The State of Kerala & Ors* (AIR 1993 Kerala 75) - K.G. Balakrishnan, J. (as he then was) after referring to the various authorities, observed:

“In order to prove that the petitioner was a member of the Hindu community she must have established that there was a bona fide intention to be converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention. It is true that no formal ceremony of purification or expiation is necessary to effectuate conversion. The petitioner is admittedly the daughter of a Jacobite Christian. So by birth she is a Christian. A convert must embrace Hinduism and follow the cultural system and tradition of that religion and should take the Hindu mode of life. It may be true that the Court cannot test or gauge the sincerity of religious belief; or where there is no question of the genuineness of a person’s belief in a certain religion, the court cannot measure its depth or determine whether it is an intelligent conviction or ignorant and superficial fancy. But a court can find the true intention of men lying behind their acts and can certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end. In the instant case, the petitioner’s mother after marrying V.M. Jacob changed her name as Uma Jacob. The petitioner’s name is Sapna Jacob, admittedly a Christian name. There is nothing in evidence

to show that the petitioner ever led a Hindu mode of life. The only ground on which the petitioner claims the benefit of Scheduled Caste is that her mother is a Scheduled Caste.” (para 6)

10.4 Similarly, in *Rakheya Bibi vs. Anil Kumar* ILR (1948) Cal. 119), the Calcutta High Court observed that it is open to the Court to go into the question whether the conversion was a bona fide one or a mere pretence.

10.5 In recent case of *M.Chandra vs. M. Thangamuthu and Another* (2010) 9 SCC 712 the Supreme Court observed in para 42 “it is a settled principle of law that to prove a conversion from one religion to another, two elements need to be satisfied. First, there has to be a conversion and second, acceptance into the community to which the person converted.”

10.6 In the case of *Punjabrao Vs Dr. D.P. Meshram (Supra)*, a Constitution Bench of Supreme Court interpreted the expression ‘profess’ in clause 3 of the Constitution (Scheduled Caste) Order 1950. The said provision contemplates that a person to be treated as one belonging to the Scheduled Caste, should profess either Hindu or Sikh religion. In that case, the election of the first respondent to the Legislative Assembly was challenged on the ground that he embraced Buddhism and had ceased to be a member of Scheduled Caste. The Election Tribunal upheld the contention of the appellant and set aside the election. However, the High Court held that conversion of first respondent to Buddhism had not been established and therefore, upheld his election. The Supreme Court allowed the appeal and restored the order of the Election Tribunal holding that the first respondent had ceased to be Hindu at the time of his nomination and consequently ineligible to be a candidate for election from a constituency reserved for members of Scheduled Castes. The Supreme Court explained as to what is meant by professing a religion. The Supreme Court observed after referring to the dictionary meanings of the word ‘profess’, “it seems to us

that the meaning “to declare one’s belief in: as, to profess Christ, is one which we have to bear in mind while construing the aforesaid Order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one’s belief must necessarily mean a declaration in such a way that would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious”.(para 13)

In that case, the argument that no Bhikku had officiated at the function and that respondent No. 1’s name was not found in the register of conversion to Buddhism and therefore, there was no satisfactory proof of conversion was rejected. The decision shows that a declaration in public renouncing his old religion and accepting another religion is an important step in establishing the factum of conversion to another religion. Another equally important step as laid down in *Perumal’s case* is the *bona fide* intention to convert demonstrated by his/her subsequent conduct. In *Punjabrao’s case*, the Supreme Court was concerned with the import of the expression ‘profess’ in the Presidential Order.

11. Though no particular formalities or ceremonies are required to be followed for the purpose of conversion, credible evidence of intention to convert followed by subsequent conduct of the converttee is necessary in reaching the conclusion that there was genuine conversion. The convert must embrace Hinduism (or another religion) and follow the cultural and spiritual traditions and take to the mode of life of that religion.

12. It may be noted that in some states, viz., Gujarat, Madhya Pradesh, Himachal Pradesh, Arunachal Pradesh etc., the Freedom of Religion Acts were enacted. The provision thereof prohibits forcible conversion. i.e., by

use of force, allurement or by fraudulent means and requires the person who participates or takes part in the ceremony for conversion from one religious faith to another should send the intimation to the District Magistrate either in advance or within a stipulated period after the event of conversion. Failure to do so is an offence. Some enactments cast a duty on the person who is converted to send a notice to the District Magistrate within a stipulated period in a prescribed form and if he fails without sufficient cause to comply with this requirement, he is also punishable. Thus, the intimation and the filing of declaration is a statutory obligation enforceable by law in some of the States. However, where there is no such legislation, the Commission feels that the filing of declaration and registration should not be made obligatory or indispensable mode of proof of conversion. Nor it is necessary or desirable for the Parliament to step in and incorporate such a provision in the Hindu Marriage Act and other laws. We are not concerned here with the issue of forcible or induced conversions and remedial action to be taken in connection therewith. We are only examining the limited question of the evidentiary proof required to establish the factum of conversion when a dispute arises.

13. Viewed in this light, the Commission is of the view that the suggestion of the High Court deserves to be accepted to a limited extent so as to afford an opportunity to those converts who would like to have documentary evidence of declaration to substantiate the plea of conversion as and when required. At the same time, the filing of declaration and recording thereof should not be made obligatory and an indispensable mode of proof of conversion, but it should only be made optional so that the converted person will be enabled to have documentary proof to establish the factum of conversion/reconversion in the absence of other reliable

documentary evidence. However, as stated earlier, such documentary proof testifying to the declaration and confirmation made by the converted persons ought not to be considered as conclusive proof. The Court cannot be barred from considering the other relevant questions such as the voluntary nature of conversion and the subsequent conduct of the alleged convert, whenever a dispute arises. Hence it is reiterated that the recorded declaration not followed by objections cannot be regarded as the sole criterion to establish conversion in a court of law, though it may be given due weight by the Court in reaching the finding.

14. The Commission would like to advert to one more aspect. In regard to the compulsory registration of marriages, the Supreme Court in the case of *Seema(Smt.) Vs Ashwani Kumar* (2006) 2 SCC 578, gave certain directives/suggestions to the State Governments. However, it does not appear that the States have taken any concrete measures in this regard. In the 211th Report, the Law Commission has gone to the extent of recommending that the non-registration of marriage and divorce should be made an offence and secondly that no judicial relief shall be granted if the concerned marriage or divorce is not duly registered under the proposed Act. Presently, the Law Commission does not wish to offer its comments on those suggestions having far-reaching effects because the issue which the Commission is presently called upon to deal with is about conversions. If the registration of marriage is made obligatory as per the directives of Supreme Court, or the recommendations of the Law Commission, it does not necessarily follow that conversion to another religion should also be compulsorily registered. Conversion which is bereft of any particular formalities or religious rites, cannot be placed on the same pedestal as marriage which can be recognized in law only if customary rites and ceremonies are gone through. Further, the

backdrop in which the compulsory registration of marriages was considered necessary in societal interest is not applicable in all fours to religious conversions. Maybe, as and when compulsory registration of marriage and divorce becomes a reality and adequate machinery is put in place to implement the directives for registration of marriages, the question of recording/registration of conversion could also be considered. At this juncture, the Commission does not propose to recommend, based on the 211th Report, to evolve a scheme for compulsory registration of conversions as well where there is no such law in a State.

Representations/views received and discussions thereon

15. Before we conclude the report by formulating the Commission's recommendations, we would like to consider the views expressed in the responses submitted by Kerala Law Academy Law College, Thiruvananthapuram, Revd. Archbishop of Bhopal, the Catholic Church Body of Madhya Pradesh and certain other Christian organizations/individuals of MP State.

15.1 The students and faculty of Kerala Law Academy, after intensive discussion submitted a report under the caption "Statutory vacuum for effectuating voluntary religious conversion". The report of Kerala Law Academy has stressed on the need to legislatively prescribe a non-cumbersome procedure for effectuating religious conversion. It has been pointed out that declaration should be recognized in the statute as an effective means of conversion. Further, it was pointed out that the law should clearly define the scope and ambit of conversion ceremonies in effecting conversion. The absence of prescription of specific procedure, according to them, creates a legal vacuum in the area of religious

conversion which is not in tune with the constitutional guarantee of freedom of conscience.

15.2 We have already adverted to some of these aspects. The Commission would like to reiterate that the declaration followed by confirmation should not by itself be treated as proof of conversion and secondly it would be highly inappropriate to prescribe by way of legislation the details of ceremonies and/or formalities to be gone through for the purpose of conversion or the manner in which by law the conversion has to be proved in a court of law. Nebulous prescriptions ought to be avoided. Further, the whole problem has to be viewed from the angle whether the conversion was bona fide or genuine. The observance of the prescribed ceremony or the declaration of the convert cannot give sanctity to the alleged conversion, if the conversion is otherwise a 'sham' exercise or a pretence to achieve an ulterior objective or the result of force or allurement. Freedom of conscience is in no way infringed by adopting this approach. The Commission is, therefore, of the view that the filing of declaration or the proof of observance of certain rituals / ceremonies cannot, having regard to the essence of conversion, be treated as conclusive proof of conversion. But, the declaration followed by confirmation, as said earlier, serves as an important piece of evidence in support of conversion.

15.3 Coming to the responses sent by the Rev. Archbishop of Bhopal and the Christian Organizations of MP (which are almost on similar lines), the following is the summary of the representations:

Cases are being registered against Christians on the allegation of effecting conversion by force or allurement and the fundamental organisations have also been disturbing the prayer meetings.

Proper guidelines on the subject of religious conversions and re-conversions will help avoiding conflicts. The law should be such as to respect the conscience of the individual. When the change of religion is a conscious choice of an individual based on his belief in God, the law cannot insist on obtaining the prior permission from the District Magistrate to change his or her religion. It is only after the conversion that it would be appropriate to send the intimation to the concerned officer of the Government.

15.4 Some of the points referred to above relate to the legal validity of certain provisions of the Freedom of Religion Act enacted by Madhya Pradesh Legislature and the alleged high-handed action by the police under the said Act and also the lawless acts of the people of certain groups opposed to Christianity. These complaints cannot be looked into by the Law Commission as it is not within the scope of the subject taken up for consideration. They raise larger issues regarding the constitutional validity of the provisions of the said enactment or distortions in applying the law or the alleged lawless acts of certain persons. These do not fall within the domain of the Commission's report.

15.5 As regards the other point raised, i.e. providing proper guidelines on the subject of conversions/re-conversions, this aspect has already been dealt with in the earlier paragraphs.

Recommendations

16. The Law Commission, therefore, proposes to formulate the following recommendations:

1. Within a month after the date of conversion, the converted person, if she/he chooses, can send a declaration to the officer in charge of registration of marriages in the concerned area.

2. The registering official shall exhibit a copy of the declaration on the Notice Board of the office till the date of confirmation.
 3. The said declaration shall contain the requisite details viz., the particulars of the convert such as date of birth, permanent address, and the present place of residence, father's/husband's name, the religion to which the convert originally belonged and the religion to which he or she converted, the date and place of conversion and nature of the process gone through for conversion.
 4. Within 21 days from the date of sending/filing the declaration, the converted individual can appear before the registering officer, establish her/his identity and confirm the contents of the declaration.
 5. The Registering officer shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objections are notified, he may simply record them i.e., the name and particulars of objector and the nature of objection.
 6. Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the party who gave the declaration or the authorized legal representative, on request.
17. Now, the question arises as to how the above recommendations could be implemented. It is clarified that in whichever State, there is a law governing conversion such as Freedom of Religion Act, the above recommendations do not apply. The question then is whether for implementation of the said recommendations in other States, the enactment

of law by Parliament is necessary. The Commission is inclined to think that a separate enactment or amendments to the respective personal laws is not required to give effect to this simple recommendation having regard to the fact that it does not go contrary to the existing provisions of law nor does in any way impinge on the religious freedom or faith of any person. Matters relating to conversion/reconversion are governed by the personal laws in respect of which Parliament has power to make laws. The Central Government can exercise its executive power under Article 73 to issue appropriate instructions to the Union Territories. Similar communications may be addressed by the Central Government to the States (where there are no laws governing the conversion) to give effect to the recommendations set out *supra*. The Governments concerned in their turn will have to issue necessary orders to the Registration officers. That can be done by the Governments of UT and State Governments administratively.

(Justice P.V. Reddi)

Chairman

(Justice Shiv Kumar Sharma)

Member

(Amarjit Singh)

Member

(Dr Brahm Agrawal)

Member-Secretary

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Age, caste, job, education: What data on couples in India shows

Data for nearly 64,000 couples from the 2015-16 National Family and Health Survey (NFHS) show several trends among Indian couples including that just over 2% married men have a wife who is older while two-thirds of them have only the husband as an earning member of the family.

INDIA Updated: Oct 03, 2018, 13:37 IST

Vijdan Mohammad Kawoosa
Hindustan Times, New Delhi


Among the NFHS statistics, the study also has data on caste and religious groups of respondents, making it possible to calculate the who have married outside their religion or caste. (Getty Images/iStockphoto/Representative image)

Older husbands and younger wives from similar caste and religious groups are the characteristics of more than three-fourths of married couples in India. Parity exists in the education level of more than 50% of the couples. Two-thirds of couples have only the husband working for a living; the wife not working is a more common phenomenon among richer and

ANNEXURE -20

COVID 19 Live Up
Bharat Bandh Tc
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Arvind Kejriwal
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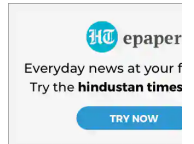
more educated couples. These findings are based on data for nearly 64,000 couples from the 2015-16 National Family and Health Survey (NFHS). And as is always the case with social statistics in India, there are significant differences across regions, age cohorts, religious backgrounds and socio-economic classes in these headline numbers.

Just over 2% married men have a wife who is older. Three-fourths of husbands are at least two years older than their wives. However, the intra-couple age difference has been coming down. It is almost 7 years for the 50-54 year age cohort, and just 2.5 for 20-24 year olds. Among major religious groups, Hindus, Muslims and Christians have the highest age difference between husband and wife (an average of a little over 5 years), while it is the lowest among Sikhs (just 3.6 years). (See chart 1)

Sonalde Desai, professor of sociology at the University of Maryland, who has been associated with the India Human Development Survey (IHDS), another rich socio-economic database in India, cautions against reading too much into the numbers. "This fuzziness in age reporting is closely linked to a patriarchal mindset which says husband must be older and taller than the wife, so whether he is or not, that is how he will be reported," she said. Given this context the movement towards equality among younger couples might also be an indicator of changing attitudes.

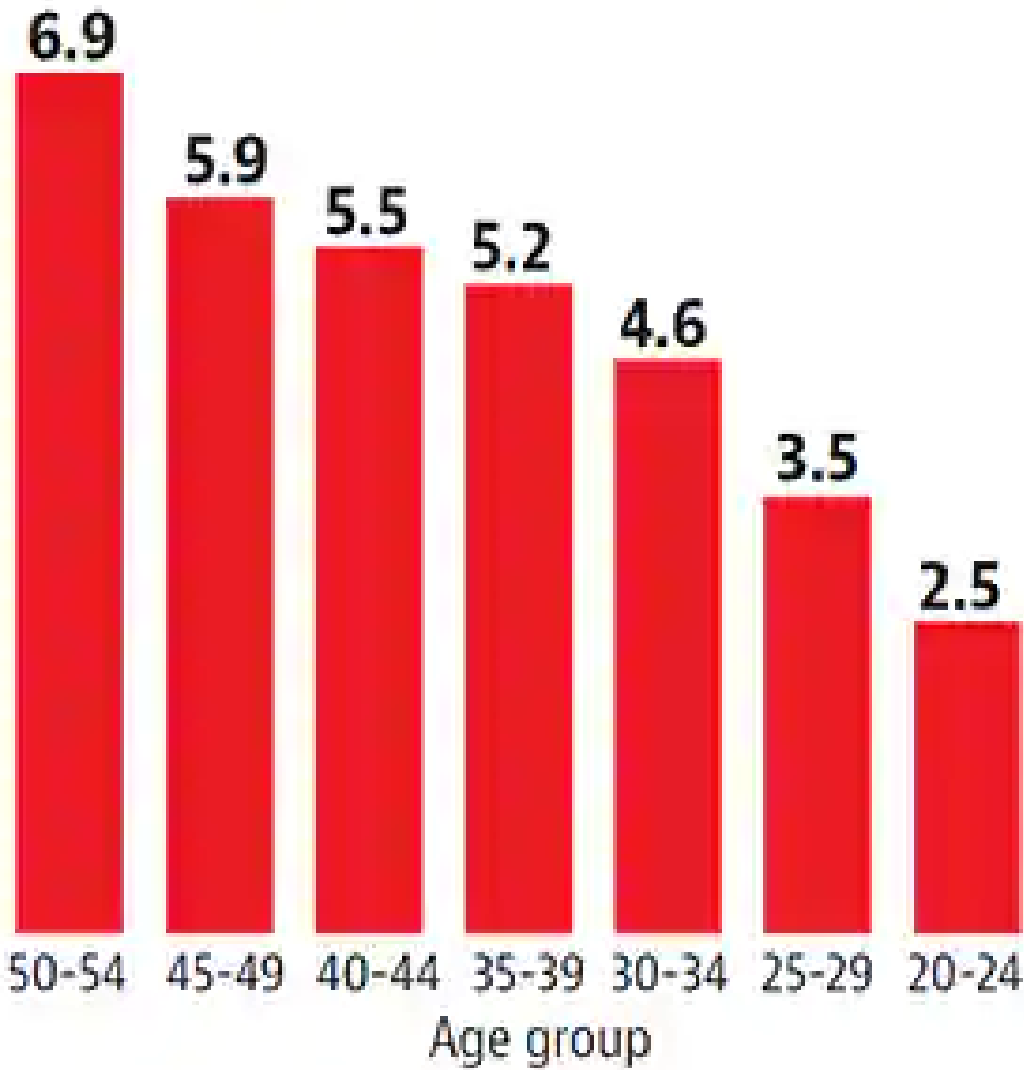
What defines most married couples in India?

Marital trends show rising parity in age and education of married partners while marriages outside religious and caste groups remain rare

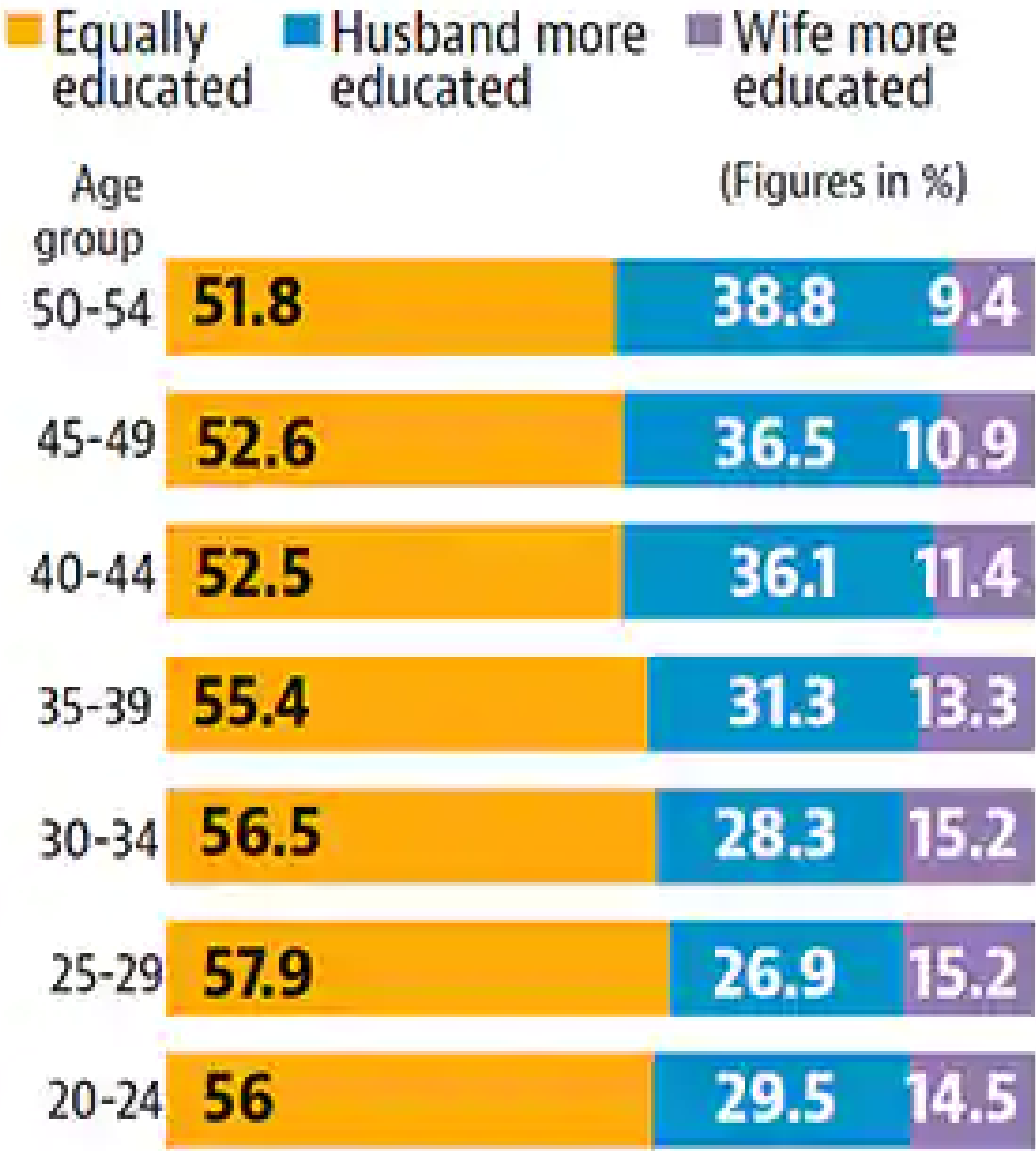


1 INTRA-COUPLE AGE DIFFERENCE HAS NARROWED OVER TIME

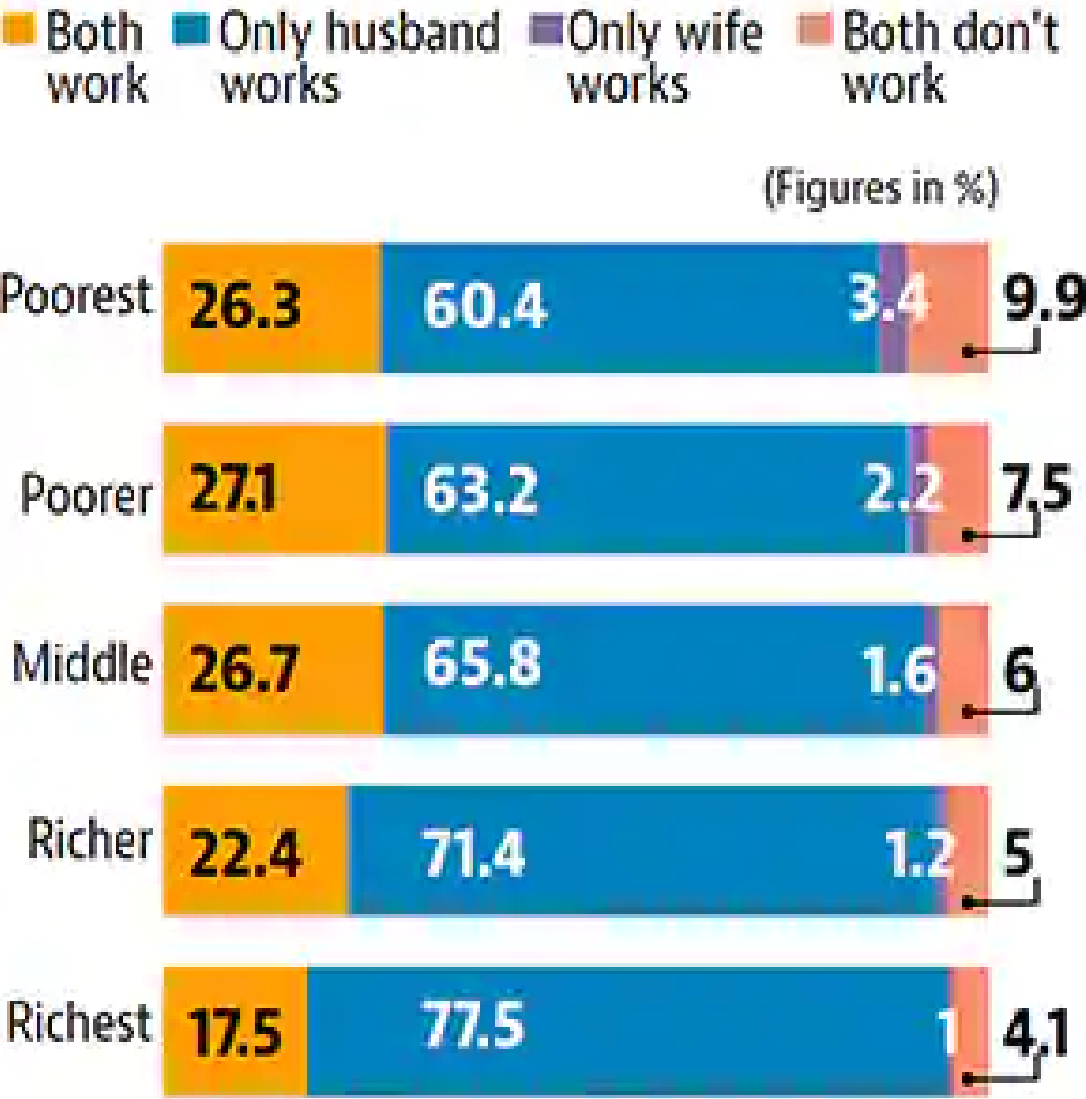
Mean age difference between partners (in years)



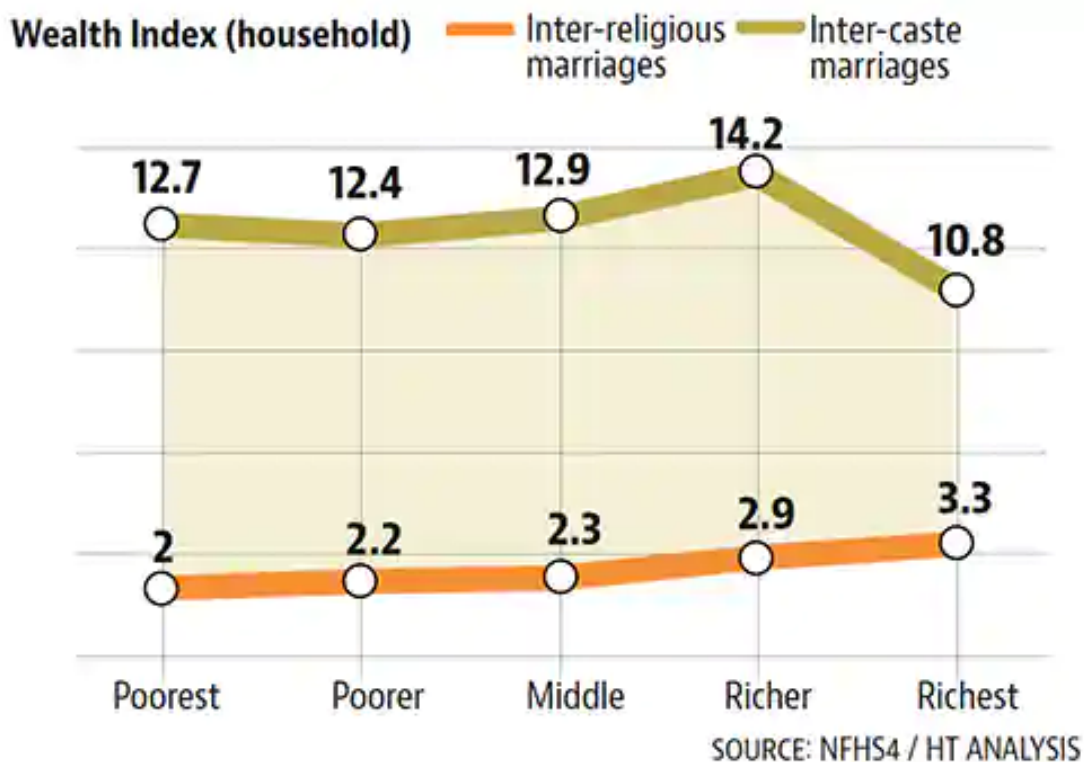
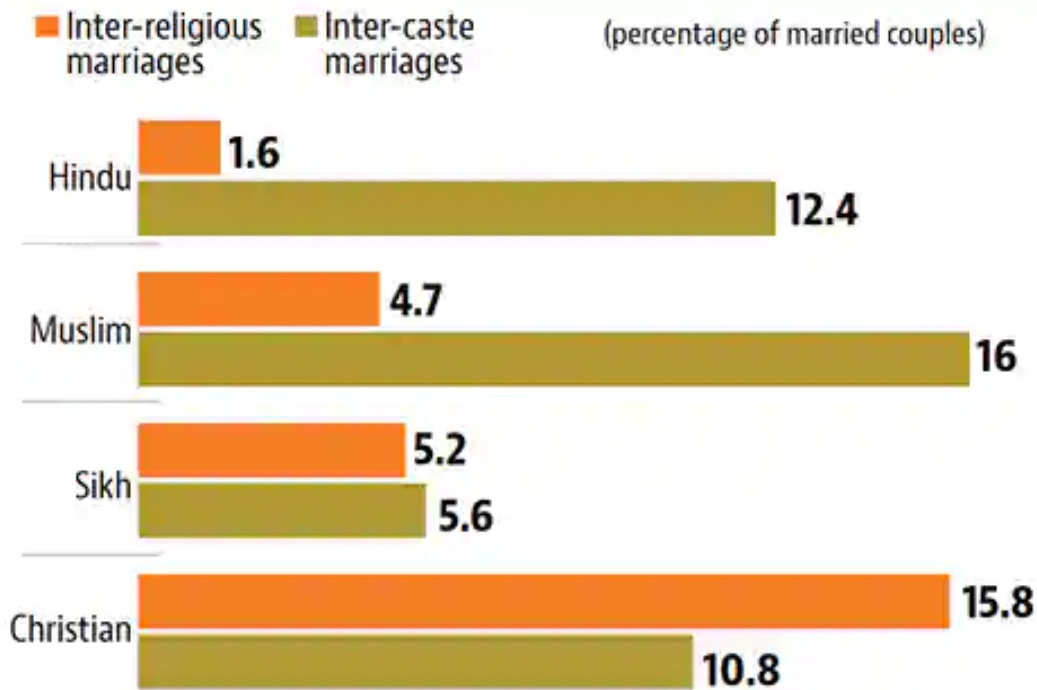
2 MARRIAGES BETWEEN EQUALLY EDUCATED PEOPLE ON RISE



3 WORKING COUPLES MORE COMMON IN POOR HOUSEHOLDS



Inter-religious & Inter-caste marriages across religious groups and household wealth



A rather counter-intuitive finding from the data is that at least half of couples in India report similar education levels across various age groups. The parity is the most among the uneducated – three in four men who never went to school marry uneducated women. The data also shows a gradual convergence in the share of couples where either the husband or the wife is more educated than the other. Educational parity among couples is more likely among economically well-off couples. Hindus (34%) are most likely to have wives with lower education levels. This figure is the lowest among Christians (18%). This might possibly be

because educational disparity between men and women is the least among Christians. (See chart 2)

Interestingly, the trend of richer urban couples having bigger parity in terms of education does not hold when it comes to employment equality for husbands and wives. The share of couples, where both husbands and wives work, increases by nine percentage points as one moves from the top to bottom wealth quintile across households. Muslims have the lowest share (12.6%) of couples with both husband and wife working, and it is the highest among Christians (30.3%). (See chart 3)

Since the NFHS also gives statistics on caste and religious groups of respondents, it is possible to calculate the share of couples who have married outside their religion or caste. To be sure, these numbers are likely to be an under-estimate because of two reasons. If either of the spouses has converted to the other's religion for marriage, the database would show them as an intra-religion couple. Similarly, the caste data will only capture marriages outside broad caste groups such as Other Backward Classes, and Scheduled Castes rather than sub-castes, which matter a lot in marital ties in India. With these caveats in place, the data shows that inter-caste marriages are more common (12.6%) than inter-religious marriages (just 2.6%) in India.

Inter-religious marriages are the most common among Christians and the lowest among Hindus. Inter-religious marriages also increase with a rise in economic status, while there seems to be no significant effect of class on inter-caste marriages. The rate of inter-religious marriages has not changed over time as the rate is roughly the same across age cohorts but the rate of inter-caste marriages has displayed slim growth. (See chart 4)

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Item 73 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Elimination of all forms of religious intolerance**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, submitted in accordance with General Assembly resolution [71/196](#).

* [A/72/150](#).

** The present report was submitted after the deadline to reflect the most recent developments.



Interim report of the Special Rapporteur on freedom of religion or belief*Summary*

The present report by the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, provides an overview of his mandated activities since he officially took office in November 2016.

The Special Rapporteur reports on the increase in religious intolerance worldwide and discusses the gap between international commitments to combat intolerant acts and national practices. He encourages States to make greater use of existing United Nations mechanisms to combat religious intolerance and concludes with recommendations that States, faith leaders, civil society and the media should consider in promoting and protecting freedom of religion or belief.



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I. Activities of the Special Rapporteur

1. The Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, was appointed by the Human Rights Council during its thirty-first session, in March 2016, and assumed his mandate on 1 November 2016. The Rapporteur's activities up to 31 July 2017 included sending out 38 communications to 24 States and others and interacting with various stakeholders in Beirut, Brussels, Dublin, Geneva, London, Montreal, New York, Ottawa and Washington, D.C.

2. The Special Rapporteur presented his annual report ([A/HRC/34/50](#)) to the Human Rights Council at its thirty-fourth session, held in March 2017, and participated in side events and bilateral meetings. He subsequently undertook a country visit to Albania, from 8 to 17 May 2017. He will present the report on that mission to the Council at its thirty-seventh session, in March 2018.

II. Introduction

3. Acts of intolerance, on the basis or in the name of religion or belief, are prevalent globally. States continue to apply discriminatory laws and policies on those grounds and are responsible for effectuating practices that violate the right to freedom of religion or belief and other interrelated rights. Non-State actors in a number of regions, especially armed groups classified as terrorist organizations, continue to engage in violence, atrocities and hate crimes,¹ often in the name of religion, against minorities and their places of worship. Mob violence, often driven and justified by religious and sectarian divisions and hatred, is frequently being used as a means of enforcing religious or social norms.

4. Verbalized expressions of hatred, facilitated by social media and information technology, which play an ever-important role in providing a platform for the voices of stigmatization and negative stereotyping, are further exacerbating the climate of intolerance. At the same time, there are increasing trends towards politicizing and securitizing religion or belief. Governments, officials and politicians are increasingly promoting identity politics to stir up public anxieties, often under the guise of public order or safety. The Special Rapporteur further notes that although violent extremism perpetrated by non-State actors, often in the name of religion or belief, is a real threat that must be confronted, what is often overlooked is the role many governments play in exacerbating, fuelling and enabling an environment in which such extremism can flourish.

5. The climate of intolerance driven by rising xenophobia and nativism against those perceived to be different or foreign is also increasingly desensitizing the general public against incitement to discrimination or violence and other dangerous practices, such as stereotyping and stigmatization based on religion or belief or other characteristics. These phenomena can lead to alienation and victimization of individuals in vulnerable situations, including those belonging to religious minorities.

6. Combating discrimination and other forms of intolerance against persons based on religion or belief has been a primary objective for the international community since the inception of the United Nations, but the path towards developing and implementing a clear and sustainable plan for countering this phenomenon since then has been challenging. The General Assembly took its first steps to respond to the plight of victims of discrimination or violence based on religion in 1946, when it gave the Commission on Human Rights a mandate to advance efforts to prevent

¹ "Hate crimes" refers to crimes motivated by animus towards individuals based on colour, nationality, race, religion, sex, sexual orientation/gender identity or other status.

discrimination on grounds of race, sex, language or religion and to protect minorities. Thirty-five years later, the General Assembly, in its resolution 35/55, adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration) and established a corresponding special procedure to monitor and report on its implementation.

7. The concept of intolerance against persons based on their religion or belief has not been specifically defined in international human rights law, but it has been repeatedly identified as a causal or correlative factor constituting an obstacle to the full enjoyment of the right to freedom of religion or belief. Article 2 (2) of the 1981 Declaration, for example, seems to conflate the concept of intolerance with discrimination, stating that “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”. However, elsewhere in the 1981 Declaration, the General Assembly clearly distinguishes between “intolerance” and “discrimination”, for example by expressing concern at manifestations of intolerance and at the existence of discrimination in matters of religion or belief.² In this way, the 1981 Declaration establishes a critical link between various manifestations of religious intolerance and their negative impact on respect for the right to freedom of religion or belief, which is contingent on respect for the principles of equality and non-discrimination to allow for the full enjoyment of this and other fundamental rights and freedoms.

8. It has since been further articulated that “intolerance based on religion or belief has two separate aspects: first, an unfavourable attitude of mind towards persons or groups of a different religion or belief, and secondly, manifestations of such an attitude in practice”. These manifestations often take the form of discrimination. In other cases, they can involve the stirring up of hatred against, or even the persecution of, individuals or groups of a different religion or belief (see [E/CN.4/Sub.2/1987/26](#), para. 15).

9. In recent years, the international community has increasingly focused on manifestations of intolerance involving religion or belief, including discrimination, hostility or violence, resulting in a number of key developments. This includes the adoption by the Human Rights Council in 2011 of resolution 16/18 on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons based on religion or belief and the formulation in 2012 of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see [A/HRC/22/17/Add.4](#), appendix). Yet despite these and other United Nations efforts to strengthen international protection for freedom of religion or belief, acts of intolerance have been on the rise in many parts of the world, revealing an alarming gap between international norms and domestic practice.

10. Available data suggest that the median level of government restrictions on religion or belief increased from 2014 to 2015 in four of the five United Nations regional groups (the African, Asia-Pacific, Eastern European, and Western European and others groups).³ Countries in the Middle East and North Africa reportedly

² See resolution 36/55, eighth preambular paragraph, and Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford, Oxford University Press, 2016), p. 330.

³ Pew Research Center, “Global restrictions on religion rise modestly in 2015, reversing downward trend” (Washington, D.C., 11 April 2017). The Special Rapporteur relies on Pew data only insofar as it provides useful and relevant information on issues related to religious intolerance worldwide. These references are not, in any way, a reflection of his endorsement of the methodology used by Pew to identify national or territorial boundaries, or his position on what the international political status of those entities should be.

experienced the largest increase in both government restrictions and social hostility levels involving religion or belief for the past eight years. Mass atrocity crimes have threatened the very existence of the Yazidis and ancient Christian communities in that region, as is the case with the Rohingya in the wider Asia-Pacific region. Ahmadis, Baha'i, Christians, Shia and other religious minorities also faced discriminatory acts and social hostilities in the Middle East and North Africa and in the wider Asia-Pacific region.

11. Social hostilities involving religion or belief in Europe also increased considerably during that period. The number of countries in which Muslims faced such hostility, for example, rose sharply, to 32 (71 per cent) in 2015, up from 26 (58 per cent) the previous year.⁴ Spates of hate crimes against Jews remained commonplace in Europe, with 73 per cent of countries reportedly experiencing such incidents. This includes some 1,615 crimes (384 violent attacks, 37 threats and 1,194 crimes against property) reported across countries represented in the Organization for Security and Cooperation in Europe.⁵ Social hostility towards Christians in Europe also spread from 17 countries (38 per cent) in 2014 to 21 countries (47 per cent) in 2015.⁴

12. Incidents of hostility against adherents from other faith or belief communities also increased globally that year. Hindus, for example, were reportedly harassed in 18 countries in 2015, up from 14 in 2014, while religiously unaffiliated people — including atheists, agnostics and those who do not identify with any religion — were harassed in 14 countries in 2015, up from 4 the previous year.⁴

13. Taken together, the 1981 Declaration, along with the United Nations resolutions and plans of action adopted subsequently, constitute a cogent strategy for responding to the interdependent issues of intolerance based on religion or belief and religious freedom. The Special Rapporteur believes, however, that addressing the so-called implementation gap that emanates from the disparity between standards and commitments set out by those declarations and resolutions, and the action — or inaction — of States to uphold them in practice, is central and critical to promoting and protecting the right to freedom of religion or belief.

14. In the light of current global trends, it is hoped that the present report will stimulate the constructive engagement of the international community with existing United Nations tools and mechanisms with a view to narrowing the gap between commitment and action for the full realization of the right to freedom of religion or belief. These tools include Human Rights Council resolution 16/18 and its accompanying Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief, the Rabat Plan of Action and such monitoring and reporting mechanisms as the special procedures, treaty bodies, especially the Human Rights Committee, and the universal periodic review, which are mandated to engage with national, regional and international commitments to effect change.

15. The desire to enjoy the right to freedom of religion or belief has “already proved itself to be one of the most potent and contagious political forces the world has ever known. But its full realization can come about only when the oppressive action by which it has been restricted in many parts of the world is brought to light, studied, understood and curtailed through cooperative policies; and when methods and means appropriate for the enlargement of this vital freedom are put into effect on the international as well as on the national plane” (see [E/CN.4/Sub.2/200/Rev.1](#)).

⁴ Pew Research Center, “Global restrictions on religion rise modestly in 2015”.

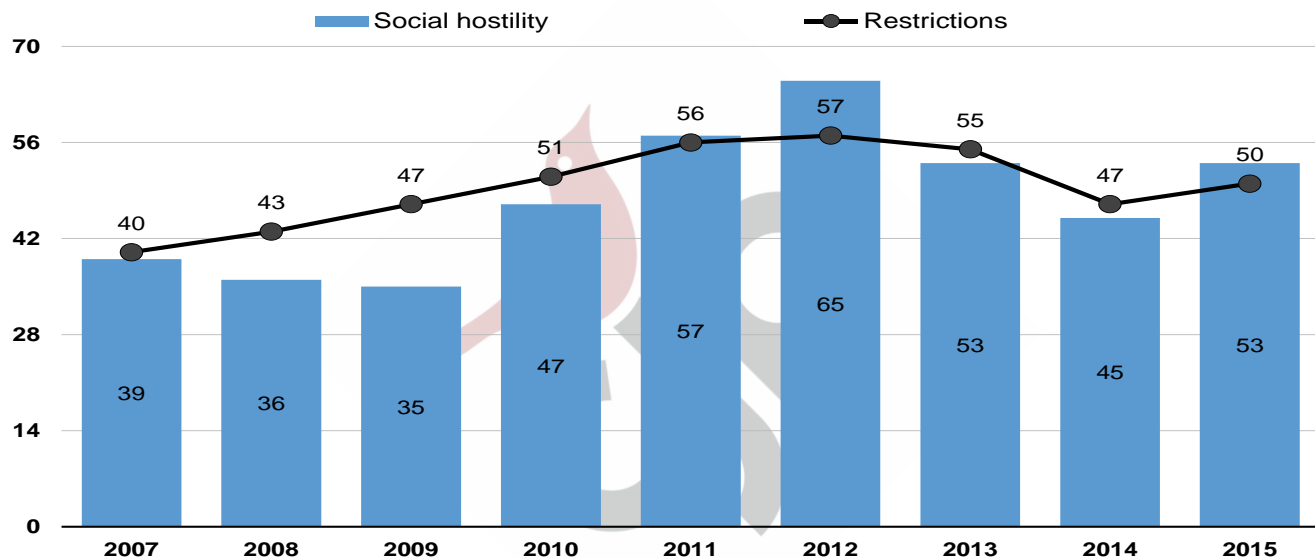
⁵ See <http://hatecrime.osce.org/what-hate-crime/anti-semitism>.

III. General trends and specific manifestations of religious intolerance

16. From 2007 to 2015, roughly one quarter of countries around the globe were affected by significant and unlawful limits on freedom of religion or belief and/or experienced high or very high levels of social hostility involving religion or belief. Today, three quarters of the world's population live in countries that have either restrictions on the right to religion or belief or a high level of social hostility involving religion or belief. Global restrictions on freedom of religion or belief increased in 2015 after a two-year downward trend. Overall, in 2015, nearly 60 per cent of countries experienced increases in government restrictions and social hostilities involving religion or belief (see figure I).⁴

Figure I

Number of countries and territories experiencing social hostility and government restrictions involving religion or belief



Source: Pew Research Center.

17. The available data imply a positive correlation between restrictions on freedom of religion and levels of religious intolerance. The Special Rapporteur notes that while other variables may give rise to upsurges in religious intolerance, increases in unlawful government restrictions against religious groups remain one of the primary and most fundamental factors in the increasing levels of religious intolerance in any given society.

18. Other factors and phenomena accounting for increases in religious intolerance include globalization, which has precipitated pluralism even in societies that have remained isolated for centuries, and growing migration, which has increasingly brought different religious communities into much closer contact. Reportedly, nearly 9 million Christians, about 6 million Muslims and some 3 million Hindus, Buddhists, Jews, adherents of folk religions and individuals who hold no religious affiliation are estimated to have migrated to a new region between 2010 and 2015.⁶

19. State and non-State reactions to the phenomenon of globalization have rendered many societies more vulnerable to tribalism, xenophobia and nativism as

⁶ Pew Research Center, "The future of world religions: population growth projections, 2010-2050" (Washington, D.C., April 2015).

individuals search for the visceral safety and comfort that shared national, racial, cultural, religious or nonreligious identities and beliefs ostensibly provide. Those anxieties are further exacerbated by concerns regarding job loss or wage competition and fear that immigrants will undermine the traditional language, religion or way of life of “native” populations, not to mention long-held class and power dynamics. As mentioned previously, such anxieties and hostilities are further exacerbated by governments, officials, politicians and agitators keen to seize on them, often by targeting religious minorities, migrants and others in order to advance their own agendas.

20. In the following subsections, some of the more prevalent and invasive manifestations of intolerance based on religion or belief are presented. These include State discrimination in law or practice; the use of blasphemy, apostasy or anti-conversion laws; unlawful acts by non-State actors (including hate crimes by private citizens or more serious acts, including atrocity crimes, by armed and/or terrorist groups); and increasing trends surrounding the securitization and politicization of religion or belief.

A. Discrimination against persons based on religion or belief, in law and/or in practice

21. Although non-discrimination and equality are at the core of all human rights, various understandings and practices related to religion, particularly when religion is politicized, can result in widespread discrimination. Some forms of discrimination are direct, such as cases of categorical prohibitions on some or all religions or beliefs; explicit calls to ban the immigration or admission of refugees who are members of a particular community group; outright restrictions of certain types of religious observances; prohibitions regarding public displays of certain religious symbols; penalties for the teaching of some religions; bans on conversion (usually affecting joining some religions and not others); and the use of anti-blasphemy laws. People who adhere to a number of religions or beliefs, including those in the Ahmadi, Baha’i, Falun Gong, Humanist, Scientology and Shia communities, the Jehovah’s Witnesses and many others, are currently subjected to such direct forms of discrimination in several countries.

22. Other forms of discrimination may be indirect. Examples include laws that appear neutral but have a disproportionate impact on different faith groups, such as zoning laws that prevent the construction of certain types of houses of worship, registration requirements, State requirements for conducting religious services in a particular language or travel bans for immigrants or to resettle refugees from countries where a majority belong to a particular faith community, ostensibly for national security reasons.

23. International law does not recognize or prohibit a specific model for how the relationship between State and religion may be organized. The Special Rapporteur notes, however, that a State’s motive for promoting both direct and indirect forms of discrimination is most commonly influenced by the nature of its relationship with a particular religion or religious community. Where a State explicitly associates itself with particular religions or truth claims, unaffiliated groups frequently suffer discrimination.⁷ Such discrimination is most injurious where laws and policies are grounded in the imposition of certain theological prescriptions or world views, and especially where glaring democratic deficits and social inequalities along ethnic or religious lines exist.

⁷ See [A/HRC/19/60](#), para. 62; [A/67/303](#), para. 47; and [A/HRC/34/50](#), para. 32.

24. Of significant note is the frequency in which a State's adherence to faith-based claims interferes with its capacity to protect the human rights of women. The many religious-based reservations entered by States parties to the Convention on the Elimination of All Forms of Discrimination against Women are a case in point.⁸ The breadth of restrictions or impositions on women's human rights, including those which limit their full participation in political, social and economic life, leaves States unprepared to promote gender equality and creates an environment in which harmful practices against women can occur. This includes the denial of access to sexual and reproductive health services and the refusal to provide adequate legal and policy safeguards against various forms of gender-based violence, including marital rape.

25. The importance of religion as an identity marker has fanned intolerant attitudes towards various religions or beliefs, encouraging States to favour certain types of values or religious affiliations as essential to the assertion of national status or citizenship. In addition to perpetuating discrimination, such policies and practices politicize religion and have a negative impact on individuals in vulnerable situations, including those belonging to religious minorities and refugees, who already suffer from a high degree of legal, economic and social disenfranchisement.

B. Anti-blasphemy and anti-apostasy laws

26. More than 70 States have anti-blasphemy laws on the books (25 per cent in the Middle East and North Africa, 25 per cent in the Asia-Pacific region, 23 per cent in Europe, 16 per cent in Sub-Saharan Africa and 11 per cent in the Americas).⁹ Many States have adopted these measures to promote and strengthen "social harmony" and "public order" between and across various communities. By and large, those efforts are effectively measures meant to protect majority religious sentiments or State-imposed religious or belief orthodoxies.

27. Anti-blasphemy, anti-apostasy and anti-conversion laws, some of which are falsely presented as "anti-incitement" legislation, often serve as platforms for enabling incitement to discrimination, hostility or violence against persons based on religion or belief. Such laws also frequently afford varying levels of protection to different religions and are often applied in a discriminatory manner. Those who support criminalizing blasphemy argue that criticism of religion or defamation of religious figures is a variant of hate speech. In reality, however, anti-blasphemy laws are generally focused on the degree to which speech causes offence or outrage to religious sentiments, and not the extent to which that speech undermines the safety and equality of individuals holding those religious views.

28. Anti-blasphemy laws often give States licence to determine which conversations on religion are admissible and which ones are too controversial to be voiced. The Special Rapporteur notes that when governments restrict freedom of expression on the grounds of "insult to religion", any peaceful expression of political or religious views is subject to potential prohibition. In practice, those laws can be used for the suppression of any dissenting view in violation of international human rights standards protecting freedom of opinion and expression and freedom of religion or belief. Consequently, the international community, in several recent action plans, have called upon States that still have blasphemy laws on the books to

⁸ See Başak Çalı and Mariana Montoya, *The March of Universality? Religion-Based Reservations to the Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21st Century* (Geneva, Universal Rights Group, 2017).

⁹ See Joelle Fiss and Jocelyn Getgen Kestenbaum, "Respecting rights? Measuring the world's blasphemy laws" (Washington, D.C., United States Commission on International Religious Freedom, July 2017), table 2.

repeal them because such laws have a stifling impact on the enjoyment of the right to freedom of religion or belief, not to mention the ability to engage in healthy dialogue and debate about religion.¹⁰

29. Legislation on religious offences is thus often used to facilitate the persecution of members of religious minority groups, dissenters, atheists and non-theists. In many States, individuals whose beliefs constitute dissent from religious doctrine or beliefs held by the State have been subjected to criminal sanctions, including life imprisonment or capital punishment, under the auspices of “fighting religious intolerance” or “upholding social harmony”. Adherents of minority faiths deemed “heretical” by governments or State-backed religious establishments, such as Ahmadis, atheists, Baha’is and various Christian groups, such as the Copts, as well as secular thinkers, remain particularly vulnerable to allegations of blasphemy and apostasy in various parts of the world, including the Middle East, North Africa and South and South-East Asia.

30. Blasphemy allegations are also used by State and non-State actors to disrupt the political status quo and to foment instability by violent extremists who may have an interest in imposing more restrictive interpretations of religion in their societies at the expense of fundamental freedoms. Non-State actors often rely on blasphemy allegations to provoke and mobilize crowds that descend on towns, burn places of worship, loot homes and kill and injure citizens. The Special Rapporteur has issued a number of communications expressing concern in situations where States, on the basis of religious hatred, failed to protect or actively participated in the targeting of individuals engaged in the peaceful exercise of their fundamental rights, including freedom of expression or belief.

31. Human reactions and emotions that were once limited to one’s immediate geographic vicinity can in the digital age reach millions in seconds. Since 2012, accusations of online blasphemy have risen, and new patterns of threats and violence have emerged.¹¹ Individuals using the Internet to disseminate views considered blasphemous are increasingly facing arrest and prosecution. The arrests are often capricious, creating an atmosphere of fear in which Internet users are unsure of the boundaries within which their rights can be exercised. Most alarmingly, online speech, usually expressed through social media sites, can also lead to offline mob violence targeting the alleged “blasphemer”.

C. Religious intolerance by non-State actors

32. In many cases, limits on freedom of religion or belief — and denials of that freedom — stem not from any governmental action but from pressure within the society in which they occur. Such pressure is usually exercised through subtle methods, such as exclusion from social life or other forms of social ostracism. A number of incidents of religious intolerance, including discrimination and violence, have occurred in the name of religion or belief, “either with the aim of imposing upon the vanquished the faith of the victor or as a pretext for extending economic or political domination” (E/CN.4/Sub.2/200/Rev.1). This includes acts committed by armed and/or terrorist groups, vigilante mobs, business corporations, civil society

¹⁰ See A/HRC/22/17/Add.4, appendix, para. 25; Office of the United Nations High Commissioner for Human Rights, “The Beirut Declaration and its 18 commitments on faith for rights” (Geneva, 2017); and United Nations Office on Genocide Prevention and the Responsibility to Protect, “Plan of action of religious leaders and actors to prevent incitement to violence that could lead to atrocity crimes”, July 2017.

¹¹ See Joelle Fiss, “Anti-blasphemy offensives in the digital age: when hardliners take over”, Analysis Paper, No. 25 (Washington, D.C., Brookings Institution, September 2016).

organizations and faith-based actors (including family members). The Special Rapporteur notes that under article 2 of the International Covenant on Civil and Political Rights, the State has a duty to protect individuals from rights abuses perpetrated by non-State actors.

33. There have been increasing reports of vigilante mobs perpetrating acts of arson, acid attacks, lynchings, rapes and murders in the name of religion in cases involving allegations of apostasy, blasphemy, heresy, sorcery and homosexuality. The hallmark of many of these attacks is the degree to which “structural violence” and/or overt incitement to discrimination or violence are present as factors. “Structural violence” refers to political, economic and social arrangements that harm individuals or otherwise hinder their access to basic needs but that are often subtle, invisible and not attributable to one specific person or group of people.¹² Such violence, in the form of discrimination and marginalization of minority communities, exposes such communities to victimization and predisposes law enforcement authorities to be capricious in their application of the rule of law.

34. State authorities have a duty to protect individuals and groups against discrimination and other acts that violate the rights of persons based on their religion or belief. There is an emerging consensus that non-State actors, especially in situations where armed and/or terrorist groups exercise effective control over a territory or a population, are also obligated to comply with human rights principles and standards. United Nations human rights bodies, agencies, mechanisms and offices, including commissions of inquiry and the Office of the United Nations High Commissioner for Human Rights (OHCHR), have addressed human rights violations committed in the name of religion by Al-Shabaab, Boko Haram, Hamas, Hizbullah, the Islamic State in Iraq and the Levant, the Lord’s Resistance Army and the Taliban (see [A/HRC/28/66](#), paras. 54 and 55). Groups targeted include atheists, Copts, Jews, Shia and Yazidi, as well as bloggers and dissenters, women and girls and lesbian, gay, bisexual, transgender and intersex persons. Where these violations occur in the context of armed conflict, they may also amount to war crimes and other breaches of international humanitarian law. Furthermore, certain acts committed by non-State actors may amount to “international crimes” and trigger individual responsibility under the principles of international criminal law.

35. While civil society actors, including faith-based organizations, often play a crucial role in countering hatred, some have also been responsible for hate speech that contributes to stigmatizing particular communities and generating a climate of fear, discrimination and violence. Hateful discourses frequently target dissenters within established or minority religious communities. Violations carried out by individuals may range from harassment in public places to acts of terrorism. These acts may be motivated or justified by religious beliefs, as in the case of numerous terrorist attacks carried out in the name of religion in recent years or because of the presumed faith identity of the victims.

36. Most violations carried out in the name of religion by family members are gender based. Examples include honour killings, female genital mutilation, corporal punishment, early and forced marriage, marital rape and other forms of domestic violence, sati and coercive practices related to sexual or gender identity, education, dress, employment, freedom of movement, freedom of association, freedom of assembly and recreation. Most of those crimes are likely to go unreported and undocumented. An environment characterized by intolerance and capricious rule of law often facilitates or enables the commission of such rights violations. Intolerant environments may be fed by religious privilege shaped by violent extremist

¹² Johan Galtung, “Violence, peace, and peace research”, *Journal of Peace Research*, vol. 69. No. 3 (1969).

interpretations of religious sources or by an ideological commitment to impose a particular world view. Such violations are most often aggravated in situations, including conflict situations, where the level of intolerance is at its highest, rule of law is at its weakest and fear is the common currency.

37. Non-State actors such as business entities are not immune to this trend. They can, and have, claimed a supposed “right” to discriminate by refusing to provide services to persons, including women, lesbian, gay, bisexual, transgender and intersex persons and members of minority religious communities, on the basis of religious objections. This discrimination can take many forms, including refusal to hire or promote individuals who do not adhere to a particular faith, requiring selective background checks for those suspected of belonging to a particular faith, refusal to provide insurance coverage for contraception for employees or refusal of services altogether.

D. Securitization of religion or belief

38. The securitization of religion or belief is largely a State response to countering violence in the name of religion. Non-State actors who use violence in the name of religion have been responsible for some of the most egregious human rights violations, including killing, torture, enslavement and trafficking, rape and other sexual abuse amounting to crimes against humanity and genocide (see [A/HRC/32/CRP.2](#)). Undoubtedly, States must be empowered to carry out their obligations to counter terrorism and violent extremism. Yet an overly securitized approach to countering violent extremism in the name of religion has often proven to be counterproductive and has led to increased levels of religious intolerance.

39. In his report to the Human Rights Council, the Special Rapporteur briefly addressed the issue of securitization of religion as a troubling phenomenon that has played an increasing role in the restriction of the right to religion or belief. He noted that the phenomenon, which is “largely a State response to countering violence in the name of religion, further compounds the corrosive conditions that already undermine the right to freedom of religion or belief” and will require close scrutiny ([A/HRC/34/50](#), para. 37).

40. What is clear, therefore, is that the State response to violent extremism in the name of religion cannot rely solely on a securitization model that is dependent on brute force, or one that treats security and the respect for human rights as a zero-sum game. As the Special Rapporteur noted, “while the quest for security and efforts to promote human rights are often seen as conflicting priorities, the failure to reconcile and resolve such tensions might actually make communities less secure” (*ibid.*, para. 55). This phenomenon has been acknowledged in pillar IV of the United Nations Global Counter Terrorism Strategy and referred to repeatedly by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

41. It is important to note that both members of religious minority groups and religious majority communities may become victims of heavy-handed securitization schemes that continue to be employed by States in several regions, including East Asia, Central Asia and parts of the former Soviet Union. Over the past few years there has been a sharp increase in the number of experts in the area of preventing or countering violent extremism, linked to a growing cottage industry surrounding the design and implementation of such programmes, with several countries in North America and Western Europe taking the lead.

42. While the Special Rapporteur is keen to engage with other United Nations rights mechanisms and governments to better understand the design and

implementation of programmes on preventing or countering violent extremism, he notes that such programmes must be designed, implemented and promoted so as to avoid any direct or incidental effects that would result in the weakening of the enjoyment of fundamental rights, including the right to freedom of religion or belief. Similarly, governments should do their utmost to ensure that programmes implemented in the name of protecting national security are not, in fact, targeting, stigmatizing or profiling particular religious or belief communities and that they do not have a disproportionate and negative impact on them (see [A/HRC/33/29](#), paras. 31, 45 and 64). The Special Rapporteur also notes, without prejudice, that some human rights groups have expressed serious concerns regarding the lack of transparency surrounding the nature of many programmes on preventing or countering violent extremism, including some of the more well-known ones endorsed and promoted by governments in North America and Western Europe, and have documented violations of the right to non-discrimination, expression, thought and conscience, privacy, education and religion.

E. Politicization of religion or belief

43. The politicization of the right to freedom of religion or belief can aggravate existing tensions within civil society communities and between those actors and the State and can increase the risk of intolerance and incitement to violence and discrimination based on religion. Politicization of religion refers to its instrumentalization, the use of “religion as a means of shaping and reinforcing narrow concepts of national identity, tapping into feelings of religious belonging for the purposes of strengthening political loyalty”. It can involve any religion and can occur in countries that have adopted an official State religion and those that are formally secular. In many of those situations “religion has been harnessed to promote national unity and societal homogeneity through the invocation of one predominant cultural and/or religious legacy to which all citizens are supposed to relate in a positive manner” (see [A/HRC/25/58](#), para. 27).

44. Indeed, the previous Special Rapporteur, Heiner Bielefeldt, had analysed the root causes of religious hatred and, in particular, the political factors that contribute to the phenomenon: the manifestation of populist discourses, the politics of fear and aggravating political circumstances, such as endemic corruption, political authoritarianism and the harnessing of religion for narrow identity politics. Such negative factors can lead to a “vicious cycle of mistrust, narrow-mindedness, hysteria, scapegoating and rumours that arouse contempt against certain religious or belief groups”, from which no region is immune (*ibid.*, para. 28).

45. The Special Rapporteur echoes his predecessor’s recommendation that “political and religious leaders, as well as civil society organizations, should actively support and encourage an atmosphere of religious tolerance and help to build societal resilience against manifestations of religious hatred”. Pursuant to the Rabat Plan of Action, these important actors and stakeholders “should refrain from using messages of intolerance or expressions which may incite to religious violence and manifestations of collective religious hatred”, and “speak[ing] out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech” (*ibid.*, para. 62).

IV. International legal framework and tools to combat religious intolerance

A. International legal framework

46. Freedom of religion or belief is interwoven with the core principles of equality, non-discrimination and non-coercion¹³ and overlaps with other rights, including the rights to freedom of opinion and expression, peaceful assembly and association, and education. It must, therefore, be understood in the context of articles 18 to 20 and be read together with core principles enunciated by articles 2 and 5 of the International Covenant on Civil and Political Rights. An abuse of one right can be an obstacle to the enjoyment of all the others. It is also clear that the right to freedom of religion or belief does not give the individual — as a rights holder — the power to marginalize, suppress or carry out violent acts against other individuals. As stated in article 5 (1) of the Covenant, no State, group or person has the right “to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized” in the Covenant. This is especially applicable with regard to individuals in vulnerable situations, such as women and lesbian, gay, bisexual, transgender or intersex persons, under the guise of manifesting their religion or protecting the “moral high ground”. Furthermore, criticism of religion, religious leaders or doctrine is not a violation of the right to freedom of religion or belief.

47. Limitations to the right to manifest freedom of religion or belief can be applied only in exceptionally rare cases, and States can never, under any circumstances, restrict the right to have or adopt a religion or belief. The rare exceptions, as defined in article 18 (3) of the Covenant, are “subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. None of those limitations can be applied for discriminatory purposes or in a discriminatory manner.

48. Similarly, the right to freedom of expression can be limited only to protect other rights, including the right to freedom of religion or belief, in very narrow circumstances. The Human Rights Committee, which monitors the implementation of the Covenant, has clarified in its general comment 34 (2011) (CCPR/C/GC/34) that in meeting their specific obligation to prohibit speech that advocates religious hatred constituting incitement (as outlined in article 20 (2)), States must also comply with the general criteria outlined in article 19 (3) for all speech restrictions. That article requires in part that any such limitations be prescribed by law, undertaken for a legitimate aim and necessary to achieve that aim.

49. Article 20 (2) is “premised on a triangular relationship between inciter, audience and target group”. The article is, therefore, less concerned about the relationship between offender and offended, or the direct harm extreme speech (in and of itself) may cause to the targeted individual or group. Rather, “its prime concern lies in the harm a third party, the extreme speech’s audience, may do to that group”. Accordingly, the applicability of article 20 (2) requires that: (a) an inciter publicly addresses an audience; (b) the content of the inciter’s speech targets a group on the basis of its religious (or racial or national) characteristics; and (c) the content of the speech will in all likelihood incite the audience to commit acts of violence (or discrimination or hostility) against the target group.¹⁴ It should be noted, however,

¹³ See Nazila Ghanea, “Religion, equality and non-discrimination”, in John Witte, Jr. and M. Christian Green, eds., *Religion and Human Rights* (Oxford, Oxford University Press, 2011).

¹⁴ Jeroen Temperman, *Religious Hatred and International Law: The Prohibition of Incitement to Violence or Discrimination* (Cambridge, Cambridge University Press, 2015), chap. 7.4.

that “since not all types of inflammatory, hateful or offensive speech amount to incitement, the two should not be conflated” (see [A/67/357](#), para. 49).

50. That being said, intolerance, negative stereotyping and stigmatization — particularly when advocated by those with a bully pulpit and a cheering crowd — all contribute to an environment rife with violations of manifold rights, including freedom of religion or belief. Yet not all speech leads to violence. Indeed, policing language and resorting to criminal sanctions does little to eliminate intolerant attitudes. States should, therefore, consider the whole range of possible responses, between criminal sanctions on one end of the spectrum and, on the other, the promotion of more speech, including civil penalties and non-legal policy measures that will bring about deep societal changes that challenge stereotyping and stigmatization.

51. Bearing this in mind, the United Nations has adopted several tools for promoting the right to freedom of religion or belief by way of combating various forms of intolerance perpetrated against persons on the basis of their religion or belief. This includes Human Rights Council resolution 16/18 and its implementation mechanism, the Istanbul Process, and the Rabat Plan of Action. Those tools provide a common platform from which Member States may address domestic concerns and common challenges related to religious and other forms of intolerance despite diverse geographic, legal and political contexts, and offer more concrete means for translating into domestic practice protections offered by articles 18 to 20 of the International Covenant on Civil and Political Rights (see, e.g., Human Rights Council resolution 34/22, para. 14).

B. Resolution 16/18 and the Istanbul Process

52. The question of just how much protection should be afforded to the right to freedom of expression remains a divisive issue for stakeholders working to combat the advocacy of national, racial or religious hatred constituting incitement to hostility, discrimination or violence. In its resolution 16/18, the Human Rights Council bridges the ideological divisions surrounding the question of how to effectively address intolerance based on religion or belief while ensuring that the actions of State and non-State actors do not impede the right to freedom of opinion or expression. The Special Rapporteur joins the chorus of stakeholders in calling upon Member States to avoid relitigating concepts that inspire and inform the content and spirit of the resolution. To ensure that their intergovernmental efforts remain relevant and to keep the hard-won agreement alive, Member States should collectively focus on the next step of their commitment: how to implement resolution 16/18.

53. Taken together, measures offered by the resolution constitute an action plan that encourage the creation of intra-State mechanisms that emphasize implementation through predominantly positive State measures. Duty bearers are committed to speaking out against manifestations of intolerance and to providing local authorities, who are on the front lines in promoting and protecting rights, with the expertise, capacity and resources needed to effectively address incidents of intolerance based on religion or belief. This includes facilitating the training of State officials in effective strategies for outreach, identifying and addressing potential areas of tension between members of different religious communities and assisting with conflict prevention and mediation. The plan also articulates the role that change agents (i.e. faith leaders, media outlets, civil society and educators) must play in combating intolerance based on religion or belief.

54. The Istanbul Process, which is intended to be supplemented by regular reporting through OHCHR, contributes to the implementation of resolution 16/18 by

facilitating State-to-State dialogue and the sharing of experiences on best practices and lessons learned from implementing the action plan set out in paragraphs 5 and 6 of the resolution. The process focuses on novel, constructive and context-based approaches to combating religious intolerance, including advocacy of religious hatred constituting incitement. In this regard, approaches that support data-driven analysis and qualitative information and illustrate the impact of national initiatives and mechanisms aimed at combating religious intolerance are absolutely essential.

55. The full potential of the Istanbul Process remains untapped. To date, six conferences have been held in various countries since the adoption of resolution 16/18, and the Special Rapporteur regrets that there is no clarity as to when and where the seventh meeting will be convened. The formats, contexts, participants and agendas for the meetings have varied widely. Some have served as opportunities for sharing success stories and generating recommendations for achieving the goals expressed in the resolution, while others have been criticized for lacking inclusivity, failing to comprehensively examine various parts of the resolution or re-engaging in polarizing debates.

C. Rabat Plan of Action

56. The Special Rapporteur confirms his support for the Rabat Plan of Action, endorsed by his predecessor in his 2013 report to the Human Rights Council ([A/HRC/25/58](#)). The Plan of Action provides a framework for understanding the obligation under article 20 of the International Covenant on Civil and Political Rights to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and offers a road map for its implementation in line with international human rights standards. It emphasizes the interdependence of human rights and recognizes the critical role they play in shaping an environment in which “constructive discussion about religious matters could be held”, and notes that open debate and dialogue are “the soundest way to probe whether religious interpretations adhere to or distort the original values that underpin religious belief”. The Plan of Action offers guidance on the implementation of legislation, jurisprudence and policies intended to combat advocacy of hatred that constitutes incitement and provides recommendations for policies that foster space for free and open discussions, promote respect for diversity and contribute to inclusion.

57. With respect to government policies, it is recommended in the Rabat Plan of Action that States encourage pluralism so that all communities are granted opportunities to make meaningful contributions to national discussions and to shaping responsive strategies for combating intolerance that may constitute incitement within various societies. States are also called upon to sensitize law enforcement officials to issues related to the prohibition of incitement to hatred, and several recommendations that stakeholders, including civil society organizations, establish mechanisms and dialogues that “foster intercultural and interreligious understanding and learning” are outlined.

58. In terms of legislation, States are encouraged in the Rabat Plan of Action to define incitement to hatred narrowly, recalling that “the broader the definition of incitement to hatred is in domestic legislation, the more it opens the door for arbitrary application of the laws”. The permissibility of restrictions on freedom of expression is measured by the three-part test of legality, proportionality and necessity. For the development of jurisprudence, the Plan of Action offers six factors for national courts to consider when assessing whether a specific instance of speech should be restricted or punished as incitement: the context, the speaker, the

intent, the content and form, the extent of the speech act and the likelihood, or imminence of inciting hatred.

59. This comprehensive toolbox forms a complementary and cohesive global strategy for combating the advocacy of national, racial or religious hatred constituting incitement to hostility, discrimination or violence. It provides the space for States to adapt recommendations to local contexts and needs, while adhering to universally applicable human rights standards.

D. New tools and processes

60. The Special Rapporteur notes that the Beirut Declaration and its 18 commitments on “Faith for Rights”, launched in March 2017, and the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes (Fez Plan of Action), launched in July 2017, are also important opportunities for advancing respect for freedom of religion and societal tolerance. It is imperative, therefore, that States redouble their focus and efforts towards putting those tools to use in the face of the growing threat of religious intolerance.

V. Assessment of implementation through United Nations human rights mechanisms

61. Existing mechanisms for improving accountability and evaluating the impact of initiatives in combating religious hatred and intolerance are either underutilized or lack the necessary resources or mandate to be effective. Human rights mechanisms, such as the special procedures, which are designed to regularly monitor and report on the status of human rights implementation and compliance through, for example, country visits, should be used more. So, too, should other reporting and review mechanisms, such as the treaty bodies, the universal periodic review and OHCHR-facilitated reporting process for the implementation of resolution 16/18.

62. Human rights indicators for assessing the degree to which human rights are respected, protected and fulfilled in the area of combating discrimination and violence against persons based on religion or belief and protecting the right to freedom of religion or belief are lacking and should be developed. Furthermore, accurate data are necessary for combating hate crimes. The need to develop common data standards for the collection of reliable statistics on hate crimes, for example, is crucial to understanding the nature of those offences, supporting the victims and initiating workable policies to prevent future crimes from occurring.

A. Implementation of resolution 16/18

63. Under resolution 16/18, States are required to report on their implementation efforts through OHCHR. State engagement with this implementation mechanism has been quite limited. States have so far submitted information to the Human Rights Council and the General Assembly during eight reporting periods, scheduled from December 2011 to March 2017 (see table 1). Just 74 of 193 United Nations Member States, or 38 per cent, reported on their efforts to implement the resolution during these reporting periods.

64. An average of 19, or less than 10 per cent, of the Member States reported on their efforts biannually during the past five and a half years. It should also be noted that an average of 63 per cent of respondents reporting during the seven reporting

cycles following the initial 2011/12 cycle had already reported at least once (with the remaining 37 per cent of respondents reporting for the first time).

Table 1

Number of countries reporting on the implementation of the action plan set out in Human Rights Council resolution 16/18 (by regional group)

	<i>Western European and others group</i>	<i>Asia- Pacific group</i>	<i>African group</i>	<i>Eastern European group</i>	<i>Latin American and Caribbean group</i>	<i>Total respondents</i>
April 2016-March 2017	5	6	2	1	3	18
October 2015-August 2016	4	5	1	4	4	18
April 2014-January 2015	1	2	0	0	2	15
August 2014-October 2015	2	4	1	4	6	17
March 2013-April 2014	10	5	0	9	0	24
October 2013-August 2014	8	3	0	3	2	16
August 2012-October 2013	9	5	1	6	5	26
December 2011-August 2012	5	5	2	4	5	21

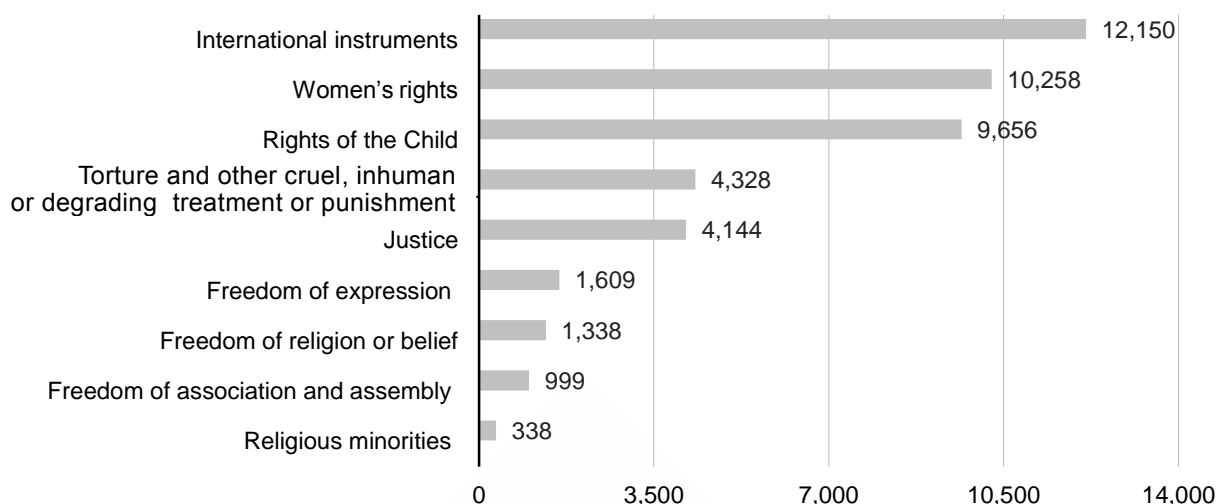
Source: Office of the United Nations High Commissioner for Human Rights.

65. Overall, a total of just 17 per cent of States from the Western European and others group, 11 per cent of the Eastern European States, 6 per cent of the Latin American and Caribbean States, 5 per cent of Asia-Pacific States and 1 per cent of African States have reported on their efforts to implement resolution 16/18 to date. To the extent that reporting is critical to the success of the resolution, the Special Rapporteur encourages all Member States to increase their efforts to ensure comprehensive and timely reporting. The Special Rapporteur also encourages stakeholders to invite non-State actors to submit information to OHCHR on progress achieved in the implementation of the resolution.

B. Universal periodic review

66. The Special Rapporteur notes that the universal periodic review has been underutilized as a mechanism for promoting the right to freedom of religion or belief (A/HRC/34/50). The top five issues reviewed during the first two universal periodic review cycles represented 73 per cent of the more than 55,000 recommendations offered. These include recommendations for ratifying or fulfilling international instruments, promoting the human rights of women and children, prohibiting torture and improving various aspects of the administration of justice. Recommendations related to the right to freedom of religion or belief constituted less than 3 per cent of recommendations, as did such interrelated rights as the right to freedom of expression and the right to freedom of association and peaceful assembly (see figure II). States accepted 843, or 63 per cent, of universal periodic review recommendations involving the right to freedom of religion or belief (which is 10 per cent less than the overall acceptance rate for recommendations related to the top five issues). A total of 63 per cent of universal periodic review recommendations involving the right to religion or belief either addressed manifestations of intolerance and their aggravating factors or encouraged measures for combating various forms of intolerance based on religion or belief (see table 2).

Figure II

Top human rights issues examined under the universal periodic review

Source: Office of the United Nations High Commissioner for Human Rights; see upr-info.org.

67. Those recommendations included ones pressing for State actions for combating discrimination, hostility or violence against persons based on religion or belief. Almost a quarter of those recommendations were related to discrimination, including against religious minorities; 5.5 per cent were related to addressing violence or other hate crimes against persons based on religion or belief; and 32 of the 1,338 universal periodic review recommendations raised the need to reform anti-apostasy or anti-blasphemy laws (but only 25 per cent of those specific recommendations were accepted).

Table 2

Recommendations raised during the first and second cycles of the universal periodic review relating to the elimination of various manifestations of intolerance based on religion or belief

<i>Recommendations</i>	<i>Number</i>	<i>Percentage of recommendations on freedom of religion or belief</i>	<i>Percentage of recommendations accepted</i>
On eliminating intolerance (generally)	63	4.7	87
On eliminating discrimination	309	23.0	66
On addressing violence	74	5.5	77
On anti-blasphemy laws	15	1.1	33
On anti-apostasy laws	11	0.8	36
Subtotal, recommendations on intolerant laws and acts	472	35.0	69
Total recommendations on freedom of religion or belief	1 338^a	100.0	63
Total recommendations made under the universal periodic review	55 225	2.4	73

Source: Office of the United Nations High Commissioner for Human Rights; see upr-info.org.

^a As at the twenty-fifth session of the universal periodic review.

68. The average rate of acceptance for recommendations related to addressing intolerant acts across all five United Nations regional groups was 58 per cent. States in the Latin American and Caribbean group received the lowest number of recommendations and have the second-highest acceptance rate. The Western European and other group received the highest number of recommendations and have the third-highest acceptance rate. States in the Asia-Pacific group received the second-highest number of recommendations but have the lowest acceptance rate. Finally, States in the Eastern European and African groups received the median number of recommendations and had the highest and median acceptance rates, respectively (see table 3).

Table 3

Recommendations raised during the first and second cycles of the universal periodic review on the elimination of discrimination on the basis of religion or belief, by regional group

<i>Regional group</i>	<i>Number of recommendations</i>		<i>Percentage of recommendations accepted</i>
	<i>Made to other Member States</i>	<i>Received from other Member States</i>	
Western European and others	94	137	73
Asia-Pacific	94	94	43
Eastern European	33	47	96
African	33	22	59
Latin American and Caribbean	51	9	78
Observer	4	–	–
Total	309	309	–

Source: Office of the United Nations High Commissioner for Human Rights; see upr-info.org.

69. The rate of acceptance for recommendations related to eliminating violence and combating other hate crimes against persons based on religion or belief was, on average, high. The countries in the Western European and other group and the Asia-Pacific States received the largest number of recommendations, while the Latin American and Caribbean and African States received few if any recommendations related to tackling violence or other hate crimes against persons based on religion or belief (see table 4).

Table 4

Recommendations raised during the first and second cycles of the universal periodic review on combating violence or hate crimes, by regional group

<i>Regional group</i>	<i>Number of recommendations</i>		<i>Percentage of recommendations accepted</i>	
	<i>Made to other Member States</i>	<i>Received from other Member States</i>	<i>On violence</i>	<i>On other hate crimes</i>
Western European and others	34	41	80	94
Asia-Pacific	28	29	67	50
Eastern European	10	16	89	100
African	14	11	91	–
Latin American and Caribbean	12	2	50	–

Regional group	Number of recommendations		Percentage of recommendations accepted	
	Made to other Member States	Received from other Member States	On violence	On other hate crimes
Observer	1	–	–	–
Total	99	99	–	–

Source: Office of the United Nations High Commissioner for Human Rights; see upr-info.org.

70. In almost 30 per cent of the recommendations related to the promotion of freedom of religion or belief, States were called upon to take measures to combat intolerant acts. The preponderance of those recommendations (18 per cent) were aimed at promoting legal and policy approaches to combating intolerant acts. This includes the approximately 6 per cent of recommendations in which strengthening protections for related rights, such as the rights to freedom of expression, assembly and association, were called for. Recommendations in support of interfaith dialogues or public awareness initiatives to promote greater tolerance were less numerous, but appear to be most favoured by States under review (see table 5).

Table 5
Specific measures recommended during the first and second cycles of the universal periodic review on combating intolerance based on religion or belief

Recommendations	Number	Percentage of all recommendations on freedom of religion or belief	Percentage of proposed measures that were accepted
For amendments to/or establishment of measures to address manifestations of intolerance (including discrimination)	472	35	69
To strengthen protections for the related right to freedom of expression	83	6.0	57.0
Related to anti-blasphemy and anti-apostasy laws	26	2.0	24.8
For interfaith or intercultural dialogue	96	7.0	94.0
On public awareness initiatives	36	3.0	92.0
Total	713	53.0	–
Total number of recommendations on freedom of religion or belief	1 338	2.4	63

Source: Office of the United Nations High Commissioner for Human Rights; see upr-info.org.

71. Recommendations under the universal periodic review for improving the collection of data on incidents of hate crime and other manifestations of intolerance based on religion or belief are negligible or non-existent, as are recommendations for strengthening intra-State processes for monitoring implementation progress or for evaluating the impact of measures aimed at combating discrimination, hostility and violence against persons based on religion or belief. Only two recommendations offered in both universal periodic review cycles concerned strengthening data collection and maintaining disaggregated data to better understand the scale and severity of hate crimes towards persons in vulnerable situations.

VI. Conclusions and recommendations

72. Manifestations of religious intolerance, not least those that lead to discrimination and violence, prevent the full realization of the right to freedom of religion or belief. Intolerance based on religion or belief has two separate aspects: (a) an unfavourable attitude of mind towards persons or groups of a different religion or belief; and (b) manifestations of such an attitude in practice. States cannot possibly legislate attitudes and must refrain from attempts to regulate controversial thoughts. Laws and judicial enforcement cannot eradicate religious intolerance and are not sufficient as a stand-alone approach. In fact, tackling manifestations of intolerance, such as discriminatory or violent acts that undermine the fundamental human rights of persons because of the religion or belief to which they may adhere may require both legal solutions and thoughtful, responsive non-legal measures promoted by the State.

73. Authorities must redouble their efforts to restore trust in public State institutions, especially when it comes to upholding freedom of religion or belief. The building of trust requires well-functioning institutions, including an independent judiciary and effective national human rights institutions and human rights monitoring bodies.

74. Furthermore, the gap between commitments to combat intolerant acts and practices and their implementation needs to be addressed through transparent, credible and accountable policies executed at the national and local levels. States must repeal all laws that discriminate on the basis of religion or belief or that undermine the exercise of the right to freedom of religion or belief. Particular attention must be paid to upholding the obligation to protect the rights of members of religious minorities, as well as those of women, children, members of the lesbian, gay, bisexual, transgender and intersex community and others in vulnerable situations, such as migrants, refugees and internally displaced persons.

75. Adequate criminal sanctions penalizing violent and particularly egregious discriminatory acts perpetrated by State or non-State actors against persons based on their religion or belief should be adopted where they do not exist and must be equitably enforced. States should also develop and implement effective preventive strategies to help curb aggravating factors linked to religious intolerance, which can lead to discrimination or violence.

76. However, criminal sanctions to curb incitement to violence, hostility or discrimination must be used as a method of last resort, and only when such sanctions are necessary and proportional to the harm to be avoided. Such laws, in fact, could reinforce religious intolerance, especially where the absence of a robust commitment to pluralism and diversity results in discriminatory State practices that abuse such laws. Furthermore, criticism of religion, religious leaders or doctrine is not a violation of the right to freedom of religion or belief. Advocates of anti-blasphemy laws should note that their application more often than not invites a cycle of hatred and hostility, reinforcing prejudice and triggering a spiral of angry and violent responses. Anti-blasphemy laws have a stifling impact on the enjoyment of the freedom of religion or belief and the freedom of opinion and expression and should be repealed.

77. The enjoyment of the full exercise of the freedom of religion or belief also requires a set of positive policy measures in the areas of education, religious literacy, media, civil society development and State cooperation with religious leaders and communities. A policy of inclusion of all religious and belief groups could go a long way to strengthen pluralism through equal participation in public life of persons holding various beliefs. Minority communities should also embrace, where possible, strategies that build constructive resilience against

intolerance to advance their re-engagement in wider society positively through coexistence, harmony and respect for the rule of law, and to pursue peaceful social change.

78. The Special Rapporteur, therefore, encourages all stakeholders, including States, faith leaders and civil society, to fully utilize the recommendations outlined in resolution 16/18, the Rabat Plan of Action, the Fez Plan of Action and the Beirut Declaration. Religious literacy and interfaith dialogue can play a vital role in identifying the common good and promoting respect for pluralism. As stressed in the Beirut Declaration, all believers — whether theistic, non-theistic, atheistic or other — should join hands and hearts in articulating ways in which “faith” can stand up for “rights” more effectively, so that each enhances the other. Rejecting expressions of hatred within one’s own community and extending solidarity and support across faith or belief boundaries are honourable and meaningful actions.

79. Many Member States and other stakeholders agree that United Nations tools developed for combating manifestations of intolerance based on religion or belief have not been used to their fullest potential and that further steps to strengthen international processes for implementation are necessary. In this regard, the Special Rapporteur encourages Member States to improve the capacity of the Istanbul Process to fully function as a mechanism for implementation. To date, the Process has received varied levels of consideration from Member States, depending on evaluations by foreign ministries in national capitals. Deeper and broader commitment could add value.

80. As such, diplomatic officials should work to orient its national experts across a range of ministries and policy fields, such as those in justice, interior, education and social affairs departments, to better operationalize this national engagement with Human Rights Council resolution 16/18. Relatively few States provide detailed information on national steps taken to implement the resolution, and little to no analysis of the impact that national measures and strategies may have had on furthering the goals of resolution 16/18 have been offered in reports to date. The Special Rapporteur recommends that steps be taken to streamline State engagement with the reporting mechanism to improve the consistency and quality of reporting and facilitate impact analysis. It is also strongly recommended that civil society organizations, national human rights institutions and international organizations be allowed to share their experiences, views and best practices in this process (see [A/HRC/34/35](#), para. 117).

81. As a mechanism for implementation, the Istanbul Process should seek to regularize introspective intergovernmental exchanges of experiences, best practices and lessons learned. Meetings should also be held regularly to assess the impact of specific measures and explore the effectiveness of the myriad strategies advanced by States for implementing resolution 16/18. Agendas for a calendar of future meetings should include periodic engagement with the resolution. Meetings should be apolitical and geared towards facilitating peer-to-peer exchanges among an inclusive pool of experts and practitioners — particularly those on the front lines of promoting and protecting rights — including educators, faith leaders, social workers, legal and human rights experts, rights advocates, experts in law enforcement and the media. Moreover, efforts to supplement those discussions with data-driven analysis and qualitative information should be undertaken.

82. As such, the collection of reliable data on hate crimes and statistics, which may speak to the effectiveness of measures taken to combat manifestations of intolerance based on religion or belief, is also crucial. However, the issue of data collection (or the lack thereof) should not be instrumentalized as a political tool and must, instead, represent a commitment by all States to monitor and report

on their obligations to respect, protect and promote the human rights of all those within their jurisdictions. The collection and publication of disaggregated data and statistics on hate crimes should include the number of cases reported to law enforcement and the number of prosecutions and convictions meted out. This information is essential for: (a) understanding the nature of the crimes committed; (b) measuring the effectiveness of initiatives to address hate crimes; (c) supporting the victims; (d) initiating workable policies to prevent future crimes from occurring; and (e) ensuring adequate resource allocation in countering hate-motivated incidents against persons based on religion or belief. Today, a comprehensive database system containing comparable national data is lacking at the United Nations level.

83. Member States should also consider taking steps to strengthen information-sharing and improve the transparency of the various United Nations processes and activities aimed at combating acts of hostility, discrimination and violence for all stakeholders. This could include establishing an “Internet portal” designed to serve as a platform for all stakeholders (i.e. faith-based actors, human rights experts, government officials, national human rights institutions and other practitioners) to access legal, judicial and policy guidance, allow for the sharing of success stories and challenges and enhance the visibility of the work of the United Nations in combating the advocacy of national, racial or religious hatred constituting incitement to hostility, discrimination or violence for broader constituencies. Such a platform could bring together sources of information produced by activities organized in support of the implementation of resolution 16/18 and the Rabat Plan of Action. Information produced by complementary processes, such as those carried out under the Beirut Declaration and the Fez Plan of Action, could also be linked to such a website.

84. The media can play a positive role in bringing about a culture in which pluralism and diversity are celebrated rather than feared. The Special Rapporteur would like to reiterate the call upon the media to develop voluntary guidelines for reporting on religious issues and initiate self-regulatory supervision mechanisms that facilitate the implementation of those guidelines in a manner fully consistent with the right to freedom of opinion and expression. There is also a need for journalists to provide a stage for thinkers who challenge alarmist stereotypes. Voices advocating for positive visions of diversity should be provided with a more visible platform to counter aggressive and sensationalist messages that appear to frequently crowd the headlines, with a view to addressing the imbalance of intolerant voices on social and traditional media platforms and tackling the challenge of promoting civil discourse online and offline.

85. To the extent that the Special Rapporteur serves as the primary focal point within the United Nations human rights system to promote the right to freedom of religion, he is committed to working with other human rights mechanisms within the confines of his mandate to combat the serious issue of intolerance based on religion or belief. As such, the Special Rapporteur endeavours: (a) to contribute to efforts focused on the implementation of measures promoted by the aforementioned legal and policy framework for combating manifestations of intolerance based on religion or belief, as well as those aimed at assessing the impact of such measures; (b) to take a leading role in promoting both legal and non-legal tools, such as resolution 16/18, in an effort to incorporate more comprehensive and flexible approaches to combating religious intolerance that rely on constructive models for promoting cooperation among States; and (c) to engage with and expand the network of actors and stakeholders, including existing regional and national human rights mechanisms and civil society actors.

ANNEXURE -P-22

THE HIMACHAL PRADESH FREEDOM OF RELIGION ACT, 2019

ARRANGEMENT OF SECTIONS

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12. Burden of proof.
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THE HIMACHAL PRADESH FREEDOM OF RELIGION ACT, 2019

(Act No. 13 of 2019)¹

(Received the assent of the Governor on the 29th October 2019 and was published in Rajpatra, Himachal Pradesh, dated 6th November 2019, pp.7635-7644)

An Act to re-enact the law to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, inducement or by any

1. For Statement of Objects and Reasons, see the Rajpatra, Himachal Pradesh, dated 31st August, 2019 pp. 5399, 5400 and 5405.

fraudulent means or by marriage and for matters connected therewith and incidental thereto.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventieth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Himachal Pradesh Freedom of Religion Act, 2019.

(2) It shall come into force on such date¹ as the State Government may, by notification in the Rajpatra (e-Gazette), Himachal Pradesh, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “coercion” means compelling an individual to act against his will by use of psychological pressure or physical force causing bodily injury or threat thereof;
- (b) “conversion” means renouncing one religion and adopting another;
- (c) “fraudulent” means to do a thing with intent to defraud;
- (d) “force” includes a show of force or a threat of injury of any kind to the person converted or sought to be converted or to any other person or property including a threat of divine displeasure or social ex-communication;
- (e) “Government or State Government” means the Government of Himachal Pradesh;
- (f) “inducement” means and includes offer of any temptation in the form of any gift or gratification or material benefit, either in cash or kind or employment, free education in reputed school run by any religious body, easy money, better lifestyle, divine pleasure or otherwise;
- (g) “minor” means a person under eighteen years of age;
- (h) “prescribed” means prescribed by rules made under this Act;
- (i) “religion” means any organized system of faith, belief, worship or lifestyle, as prevailing in India or any part of it, and defined under any law or custom for the time being in force;

1. Act came into force from 18th December, 2020 vide Notification No. Home C(A) 1-5/2012. dated, 18th December, 2020 published in the Rajpatra, Himachal Pradesh, dated 18th December, 2020 p 6008.

- (j) “religious priest” means priest of any religion who performs purification Sanskar or conversion ceremony of any religion and by whatever name he is called such as pujari, pandit, mulla, maulvi, father etc.; and
- (k) “undue influence” means the unconscientious use by one person of his power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence.

3. Prohibition of conversion from one religion to another by misrepresentation, force, fraud, undue influence, coercion, inducement or marriage.—No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use of misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage; nor shall any person abet or conspire such conversion:

Provided that, if any person re-converts to his parent religion, it shall not be deemed to be a conversion under this Act.

4. Punishment for contravention of provisions of section 3.—Whoever contravenes the provisions of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which shall not be less than one year but which may extend to five years and shall also be liable to pay fine:

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall also be liable to pay fine :

5. Marriages done for sole purpose of conversion to be declared null and void.—Any marriage which was done for the sole purpose of conversion by a person of one religion with a person of another religion either by converting himself before or after marriage or by converting the other person before or after marriage may be declared null and void by the Family Court on a petition presented by either party thereto.

6. Court to which petition shall be presented.—Every petition under section 5 shall be presented to the Family Court or where Family Court is not established, the Court within the local limits of whose ordinary original civil jurisdiction,—

- (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition, resides; or
- (iii) the parties to the marriage last resided together; or

- (iv) in case the wife is the petitioner, where she is residing on the date of presentation of the petition.

7. Declaration before conversion of religion and pre-report about purification Sanskar.—(1) One who desires to be converted to other religion, shall give a declaration at least one month in advance, on the proforma as may be prescribed, to the District Magistrate or the Executive Magistrate specially authorized by the District Magistrate, of his intention, to convert his religion on his own volition or free consent and without any force, coercion, undue influence, inducement or fraudulent means:

Provided that no notice shall be required if a person re-converts to his parent religion.

(2) The religious priest, who performs purification Sanskar or conversion ceremony for converting any person of one religion to another religion, shall give one month's advance notice of such Sanskar or conversion ceremony, on the proforma as may be prescribed, to the District Magistrate or any other officer appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed.

(3) The District Magistrate, after receiving the information under sub-section (1) and (2), shall conduct an inquiry through police or such agency as he deems fit, with regard to intention, purpose and cause of proposed conversion.

(4) Contravention of sub-section (1) or sub-section (2) shall have the effect of rendering the said conversion, illegal and void.

(5) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which shall not be less than three months, but may extend to one year and shall also be liable to pay fine.

(6) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than six months, but may extend to two years and shall also be liable to pay fine.

8. Prosecution to be launched with the prior sanction.—No prosecution for an offence under section 7 shall be instituted by any person except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate, as may be authorized by the District Magistrate in this behalf.

9. Punishment for violation of provisions of the Act by an institution or organization.— If any institution or organization violates the provisions of this Act, the person or persons in charge of the affairs of the organization or institution, as the case may be, shall be subject to the punishment as provided under section 4 and the registration of such organization or institution under any

law for the time being in force may be cancelled after giving a reasonable opportunity of being heard.

10. Prohibition on accepting donation or contribution.—Notwithstanding anything contained in any other law for the time being in force, no person or organization violating the provisions of this Act shall be allowed to accept any donation or contribution of any kind from within or outside the country.

11. Parties to offence.—When an offence is committed under this Act, —

- (i) every person who actually does the act which constitutes the offence;
- (ii) every person who does or omits to do any act enabling or aiding another person to commit the offence;
- (iii) every person who aids or abets another person in commission of the offence; and
- (iv) every person who counsels or causes any other person to commit the offence.

shall be deemed to have taken part in the commission of such offence and be guilty thereof and shall be charged as if he had himself committed the offence.

12. Burden of proof.—The burden of proof as to whether a religious conversion was not effected through misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage lies on the person so converted and, where such conversion has been facilitated by any person, on such other person.

13. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence committed under this Act shall be cognizable and non-bailable.

14. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Rajpatra (e-Gazette), Himachal Pradesh, make provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the purpose of removing such difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.

15. Power to make rules.— (1) The State Government may, by notification in the Rajpatra (e-Gazette), Himachal Pradesh, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16. Repeal and savings.—(1) The Himachal Pradesh Freedom of Religion Act, 2006 is hereby repealed.

(2) Notwithstanding such repeal, any action taken or anything done under the Act so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.



भोपाल, दिनांक 9 जनवरी 2021

क्र. 13-इक्कीस-अ(प्रा.).—भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, मध्यप्रदेश धार्मिक स्वतंत्रता अध्यादेश, 2020 (क्रमांक 1 सन् 2021) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर. पी. गुप्ता, अवर सचिव.

MADHYA PRADESH ORDINANCE

NO. 1 OF 2021

ANNEXURE -P-23

THE MADHYA PRADESH FREEDOM OF RELIGION ORDINANCE, 2020

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MADHYA PRADESH ORDINANCE
No. 1 OF 2021

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THE MADHYA PRADESH FREEDOM OF RELIGION ORDINANCE, 2020

[First published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 9th January, 2021.]

Promulgated by the Governor in the seventy first year of the Republic of India.

An Ordinance to provide freedom of religion by prohibiting conversion from one religion to another by misrepresentation, allurement, use of threat or force, undue influence, coercion, marriage or any fraudulent means and for the matters connected therewith or incidental thereto.

WHEREAS the State Legislature is not in session and the Governor of Madhya Pradesh is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Madhya Pradesh is pleased to promulgate the following Ordinance:-

Short title,
extent and
commencement.

1.(1) This Ordinance may be called the Madhya Pradesh Freedom of Religion Ordinance, 2020.

(2) It shall extend to the whole of the State of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,-

- (a) "allurement" means and includes an act of offering of any temptation in the form of any gift or gratification or material benefit, either in cash or kind or employment, education in school run by any religious body, better lifestyle, divine pleasure or the promise of it thereof or otherwise;
- (b) "coercion" means compelling an individual to act against his will by any means whatsoever including psychological pressure or physical force causing bodily injury or threat thereof;
- (c) "conversion" means renouncing one religion and adopting another but the return of any person already converted to the fold of his parental religion shall not be deemed conversion;

Explanation.-the parental religion of the person converted shall mean the religion to which his father belonged at the time of birth of such person.

- (d) "force" includes a show of force or a threat of injury of any kind to the person converted or sought to be converted or to his parents, siblings, or any other person related by marriage, adoption, guardianship or custodianship or their property including a threat of divine displeasure or social ex-communication;
- (e) "fraudulent" includes misrepresentation of any kind or any other fraudulent contrivance;
- (f) "Government" means the Government of Madhya Pradesh;
- (g) "minor" means a person under eighteen years of age;

- (h) "religious priest" means and includes a person professing any religion and who performs rituals including purification Sanskar or conversion ceremony of any religion and by whatever name is called such as Pujari, Pandit, Qazi, Mulla, Maulvi and Father;
- (i) "undue influence" means the unconscientious use by one person of his power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence.

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(2) The words and expressions used in this Ordinance but not defined herein but defined in the Code of Criminal Procedure, 1973 (2 of 1974) and the Indian Penal Code, 1860 (45 of 1860) shall have the same meaning as assigned to them respectively unless the context otherwise provides.

3. (1) No person shall,—

- (a) convert or attempt to convert, either directly or otherwise, any other person by use of misrepresentation, allurement, use of threat or force, undue influence, coercion or marriage or by any other fraudulent means;
- (b) abet or conspire such conversion.

Prohibition of unlawful conversion from one religion to other religion

(2) Any conversion in contravention of provision of this section shall be deemed null and void.

4. No police officer shall inquire or investigate except upon a written complaint of a person converted in contravention of section 3 above or his parents or siblings or with the leave of the court by any other person who is related by blood, marriage or adoption, guardianship or custodianship, as may be applicable.

Complaint against conversion of religion.

5. Whoever contravenes the provisions of section 3 shall be punished with imprisonment for a term, which shall not be less than one year but which may extend to five years and shall also be liable to fine which shall not be less than Rupees Twenty Five Thousand:

Punishment for contravention of provisions of section 3.

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes shall be punished with imprisonment for a term which shall not be less than two years but which may extend to ten years and shall also be liable to fine which shall not be less than Rupees Fifty Thousand:

Provided further that whosoever intends to marry a person of any religion other than the religion professed by him and conceals his religion in such a manner that the other person whom he intends to marry, believes that his religion is truly the one professed by him shall be punished with imprisonment for a term, which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than Rupees Fifty Thousand:

Provided also that whosoever contravenes the provisions of section 3 in respect of mass conversion shall be punished with imprisonment for a term, which shall not be less than five years but which may extend to ten years and shall also be liable to fine which shall not be less than Rupees One Lakh:

Provided also that in the case of a second or subsequent offence mentioned in this section is committed, the term of the imprisonment shall not be less than five years but may extend to ten years and also with fine.

Explanation.: Mass conversion means a conversion wherein more than two persons are converted at the same time.

Marriages performed with the intent to convert a person shall be null and void.

6. Any marriage performed in contravention of section 3 shall be deemed null and void.

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Jurisdiction of the Court.

7. Every petition for declaring a marriage null and void under section 6 shall be presented by any person mentioned in section 4 before the family court or where a family court is not established, the court having jurisdiction of a family court within the local limits wherein,—

- (a) the marriage was solemnized; or
- (b) the respondent, at the time of the presentation of the petition, resides; or
- (c) either parties to the marriage last resided together; or
- (d) where the petitioner is residing on the date of presentation of the petition.

Inheritance right.

8. (1) Notwithstanding the provisions of section 6 or the decision of the competent court under section 7 hereinabove, any child born out of marriage performed in contravention of section 3 shall be deemed legitimate.

(2) Notwithstanding the provision of section 6 hereinabove the succession to the property by such child shall be regulated according to the law governing inheritance of the father.

(3) Nothing contained in sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void under section 6 and which is annulled by competent court under section 7, any right in or to the property of any person, other than his father.

Right to maintenance.

9. Notwithstanding any provision contained in any other law for the time being in force such woman whose marriage is declared null and void under section 7 and her children born of such marriage shall be entitled to maintenance as provided in Chapter IX of the Criminal Procedure Code, 1973 (2 of 1974).

Declaration before conversion of religion.

10. (1) Any person who desires to convert shall submit a declaration to that effect 60 days prior to such conversion, in prescribed Form to the District Magistrate stating that he desires to convert on his own free will and without any force, coercion, undue influence or allurements.

- (2) Any religious priest and/or any person who intends to organize conversion shall give 60 days prior notice to the District Magistrate of the district where such conversion is proposed to be organized in such Form as may be prescribed.
- (3) The District Magistrate, on receiving the information under sub-sections (1) and (2) shall give acknowledgement of such prior notice in such manner as may be prescribed.
- (4) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than three years, but may extend to five years and shall also be liable to fine which shall not be less than Rupees Fifty Thousand.
- (5) No court shall take cognizance of the offence committed under this section without prior sanction of the concerned District Magistrate.

11. (1) Where any institution or organization violates any provision of this Ordinance, the person incharge of the affairs of the such institution or organization, as the case may be, shall be liable for punishment as provided under section 5 of this Ordinance.

Punishment for violation of provisions of Ordinance by an institution or organization.

(2) The registration of institution or organization found guilty of committing any offence under this Ordinance may be rescinded by the Competent Authority.

12. The burden of proof as to whether a conversion was not effected through misrepresentation, allurements, use of force, threat of force, undue influence, coercion or by marriage or any other fraudulent means done for the purpose of carrying out conversion lies on the accused.

Burden of Proof.

13. (1) Notwithstanding anything contrary contained in the Code of Criminal Procedure, 1973, every offence committed under this Ordinance shall be cognizable, non-bailable and triable by the Court of Session.

Offence to be cognizable, non-bailable and triable by Court of Session.

(2) While trying an offence under this Ordinance, a Session Court may also try an offence, other than the offence under this Ordinance, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

14. No Police Officer below the rank of Sub-inspector of Police shall investigate any offence registered under the Ordinance.

Investigation.

15. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it, to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before State Legislature.

16. (1) The Government may, by notification in the Official Gazette, make rules or regulations for carrying out the provisions of this Ordinance.

Power to make rules.

(2) Any notification issued under sub-section (1) shall be published in the Official Gazette, and shall take effect thereupon.

17. (1) The Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968) and rules made thereunder are hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, but without prejudice to the application of section 10 of the Madhya Pradesh General Clauses Act, 1957 (3 of 1958), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed, shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Ordinance.

Bhopal :
Dated the 7th January, 2021

ANANDIBEN PATEL
Governor
Madhya Pradesh.

ANNEXURE -P-24

THE HIMACHAL PRADESH FREEDOM OF RELIGION ACT, 2006

ARRANGEMENT OF SECTIONS **264**

Sections:

1. Short title.
2. Definitions.
3. Prohibition of forcible conversion.
4. Notice of intention.
5. Punishment for contravention of the provisions of section 3.
6. Offence to be cognizable.
7. Prosecution to be made with the sanction of District Magistrate.
8. Power to make rules.

THE HIMACHAL PRADESH FREEDOM OF RELIGION ACT, 2006

(ACT NO. 5 OF 2007)¹

(Received the assent of the Governor on 18th February, 2007 and was published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 19th February, 2007, pp. 11283-11292).

An Act to provide for prohibition of conversion from one religion to another by the use of force or inducement or by fraudulent means and for matters connected therewith or incidental thereto.

BE it enacted by the Legislative Assembly of the State of Himachal Pradesh in the Fifty-seventh Year of the republic of India, as follows:-

1. Short title.- This Act may be called the Himachal Pradesh Freedom of Religion Act, 2006.

2. Definitions.- In this Act, unless the context otherwise requires-

- (a) “conversion” means renouncing one religion and adopting another;
- (b) “force” shall include show of force or threat of injury or threat of divine displeasure or social ex-communication;
- (c) “fraud” shall include misrepresentation or any other fraudulent contrivance;

1. Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 27th December, 2006, pp. 9239 and 9243.

(d) “inducement” shall include the offer of any gift or gratification, either in cash or in any kind or grant of any kind benefit either pecuniary or otherwise; and

(e) “minor” means a person under eighteen years of age.

3. Prohibition of forcible conversion.- No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion:

Provided that any person who has been converted from one religion to another, in contravention of the provisions of this section, shall be deemed not to have been converted.

4. Notice of intention.- (1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into by such agency as he may deem fit:

Provided that no notice shall be required if a person reverts back to his original religion.

(2) Any person who fails,

to give prior notice, as required under sub-section (1), shall be punishable with fine which may extend to one thousand rupees.

5. Punishment for contravention of the provision of section 3.- Any person contravening the provisions contained in section 3 shall, without the prejudice to any civil liability, be punishable with imprisonment of either description which may extend to two years or fine which may extend to twenty five thousand rupees or with both:

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to Schedule Castes or Schedule Tribes, the punishment of imprisonment may extend to three years and fine may extend to fifty thousand rupees.

6. Offence to be Cognizable.- An offence under this Act shall be cognizable and shall not be investigated by an officer below the Rank of Inspector of Police.

7. Prosecution to be made with the sanction of District Magistrate.- No Prosecution for an offence under this Act shall be made without the sanction of the District Magistrate or such other authority, not below the rank of a Sub-Divisional Officer, as may be authorized by him in that behalf.

8. Power to make rules.- (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session in which it is so laid or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule or agrees that the rules should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.



ANNEXURE -P-25

CWP No. 438 of 2011 and CWP No. 4716 of 2011

Evangelical Fellowship of India v. State of H.P.

2012 SCC OnLine HP 5554

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(BEFORE DEEPAK GUPTA AND RAJIV SHARMA, JJ.)

CWP No. 438 of 2011

1. Evangelical Fellowship of India, A Society registered under the Societies Registration Act, 1860, 805/92, Deepali Building, Nehru Place, New Delhi-110 019, through Rev. Richard Howell, General Secretary.
2. Act Now For Harmony and Democracy (ANHAD) a registered Trust having its office at 23, Canning Lane, New Delhi-110 001, through Shabnam Hashmi, Managing Trustee Petitioners

v.

State of Himachal Pradesh through Principal Secretary, Home Department, Shimla, Himachal Pradesh Respondent

And

CWP No. 4716 of 2011

Rev. Shamser Masih, Son of Shri Jit Masih, earlier Presbyterian-in-charge, Christ Church, The Ridge, Shimla, presently posted as Presbyterian-in-charge, Church of St. John in wilderness, Palampur, District Kangra, H.P. Petitioner

v.

1. State of Himachal Pradesh, through Principal Secretary, Home Department, Shimla, H.P.
2. District Magistrate, District Shimla, Shimla, H.P.
3. Shri Samuel Prakash, S/o Man Singh, Resident of Christ Church Annexe, Christ Church, The Ridge, Shimla, H.P. (deleted).
4. Mrs. Meenu Prakash, W/o Shri Samuel Prakash, Resident of Christ Church Annexe, Christ Church, The Ridge, Shimla, H.P. .
..... Respondents

CWP No. 438 of 2011

For the petitioners: Mr. Sudhir Nandarajog, Senior Advocate, with M/s. R.R. David, P.K. Singh, Aman Sood, Tehmina Arora, Loreign Ovung, Febin Mathew Varghese and Dhiraj Philip, Advocates.

For the respondents: Mr. R.K. Bawa, Advocate General, with Mr. Vivek Singh Thakur, Additional Advocate General, for the respondent.

Dr. Subramanian Swamy with Mr. Ajay Pal Jagga and Ms. Madhu Sharma, Advocates, as intervener.

Mr. T.S. Chauhan, Advocate, for applicant-Mahant Ram Mohan Dass.

Mr. B.C. Negi and Mr. Rajesh Kumar, Advocates, for applicant-Sanatan Dharam Sabha.

Ms. Anu Tuli, Advocate, for applicant-Ramesh Chogar.

CWP No. 4716 of 2011

For the petitioner: M/s. Manoj V. George, B.D. Das, Alex Joseph and Aman Sood,

Advocates.

For the respondents: Mr. R.K. Bawa, Advocate General, with Mr. Vivek Singh Thakur, Additional Advocate General, for respondents No. 1 and 2.

Mr. Dinesh Thakur, Advocate, for respondent No. 4.

Dr. Subramanian Swamy with Mr. Ajay Pal Jagga and Ms. Madhu Sharma, Advocates, as intervener.

CWP No. 438 of 2011-A a/w CWP No. 4716 of 2011-E

Decided on August 30, 2012

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Case Summary

Religious Freedom — State does not have right to ask a person to disclose his religious beliefs

Holding that citizens had the right to keep their religious beliefs secret, the Himachal Pradesh High Court struck down a provision of a state law that required persons intending to convert to inform the district magistrate a month in advance. "A State has no right to ask a person to disclose what his personal belief is," a bench of Justice Deepak Gupta and Justice Rajiv Sharma said declaring Section 4 of the Himachal Pradesh Freedom of Religion Act, 2006 that made it punishable for a person intending to convert not to give prior notice to the district magistrate. It also declared unconstitutional Rules 3 and 5 framed under that Act that dealt with the procedural aspects of this provision, saying these violated the principles of equality enshrined in Article 14 of the Constitution. If anyone converted to a different faith of own will, the state had no role to play, but if the conversion was because of force, fraud, or inducement, and it threatened the secular fabric of India, law could prevent it, the HC said.

The court, however, dismissed the plea of Evangelical Fellowship of India to declare unconstitutional the whole Act that aims at checking conversion by use of force, fraud or inducement. Holding that every citizen has a right not only to follow his own belief but also has a right to change his belief, the HC said, there was no fundamental right to convert others.

Deepak Gupta, J.

CWP No. 438 of 2011

The petitioners, by means of this writ petition, have challenged the constitutional validity of the Himachal Pradesh Freedom of Religion Act, 2006 (hereinafter referred to as the Himachal Pradesh Act) and have prayed that the said Act, especially Sections 2 (a), 2(b), 2(c), 2(d), 4, 8 of the Act and Rules 3, 4, 5 and 6 of the H.P. Freedom of Religion Rules framed under the Act are ultra vires the Constitution of India and violate the provisions of Articles 14, 19(1), 21 and 25 of the Constitution of India.

2. We may point out that during the course of the hearing of the writ petitions, a large number of applications were filed by various individuals and bodies, such as, Dr. Subramanian Swamy, Mr. Vijay Kumar Sood, Shree Sanatan Dharam Sabha, Mr. Ajay Sood, Mahant Ram Mohan Dass, Shri Brahmin Sabha Shimla, Mr. Ramesh Chaujjar, Shri Ashutosh, etc. Therefore, on 30th April, 2012, we had permitted all these applicants to intervene, though they were not permitted to be arrayed as respondents. Dr. Subramanian Swamy, even at the time of final arguments, prayed that he may be arrayed as a party-respondent. We have permitted the applicants to assist the Court, but we do not feel that they are necessary parties to the petitions.

3. At the outset, we may state that a large number of issues raised in this petition stand decided and are no longer *res integra* in view of the decisions of the Apex Court rendered in *Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 Supreme Court 908 and *Satya Ranjan Majhi v. State of Orissa*, (2003) 7 Supreme Court Cases 439. In *Stainislaus's* case, the Apex Court upheld the provisions of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and the Orissa Freedom of Religion Act, 1967. In *Satya Ranjan Majhi's* case, the Apex Court was dealing with a petition wherein the provisions of Sections 2 and 7 of the Orissa Freedom of Religion Act, 1967 and Rules 4 & 5 of the Orissa Freedom of Religion Rules, 1989, had been challenged.

4. In *Stainislaus's* case, the Apex Court dealing with Article 25(1) of the Constitution of India and especially the word 'propagate' held as follows:

"15. Article 25(1) of the Constitution reads as follows:

"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 religion."

15-A. Counsel for the appellant has argued that the right to 'propagate' one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25(1) of the Constitution.

16. The expression 'propagate' has a number of meanings, including "to multiply specimens of (a plant, animal, disease etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons, be the meaning for purposes of Article 25(1) of the Constitution. The Article guarantees a right of freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biological sense.

17. The expression 'propagate' has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practise, etc.)".

18. According to the Century Dictionary (which is an Encyclopedic Lexicon of the English Language) Vol. VI, 'propagate' means as follows: -

"To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion."

19. We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25(1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

20. The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in *Ratilal Panachand Gandhi v. The State of Bombay*, (1954) SCR 1055 = (AIR 1954 SC 388) and it was held as follows: -

"Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others."

This Court has given the correct meaning of the Articles, and we find no justification for the view that it grants a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion.

21. It has next been argued by counsel that the Legislatures of Madhya Pradesh and

Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act respectively, because their laws regulate 'religion' and fall under the Residuary Entry 97, in List I of the Seventh Schedule to the Constitution.

22. It is not in controversy that the Madhya Pradesh Act provides for the prohibition of conversion from one religion to another by use of force or allurement, or by fraudulent means, and matters incidental thereto. The expressions "allurement" and "fraud" have been defined by the Act. Section 3 of the Act prohibits conversion by use of force or by allurement or by fraudulent means and Section 4 penalises such forcible conversion. Similarly, Section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any fraudulent means, and Section 4 penalises such forcible conversion. The Acts therefore, clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.

23. The expression "Public order" is of a wide connotation. It must have the connotation which it is meant to provide at the very first Entry in List II. It has been held by this Court in *Ramesh Thapper v. The State of Madras*, (1950) SCR 594 = (AIR 1950 SC 124) that "public order" is an expression of wide connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established."

24. Reference may also be made to the decision in *Ramjilal Modi v. State of U.P.*, (1957) SCR 860 = (AIR 1957 SC 620) where this Court has held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that

"it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order."

It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in *Arun Ghosh v. State of West Bengal*, AIR 1970 SC 1228 = (1970 Cri LJ 1136) where it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. Thus, if an attempt is made to raise communal passions, e.g., on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule."

5. Dr. Subramanian Swamy has drawn our attention to the Collected Works of Mahatma Gandhi, wherein certain questions were posed by Mahatma Gandhi and answered by himself:

"Would you prevent missionaries coming to India in order to baptize?

Who am I to prevent them? If I had power and could legislate, I should certainly stop all proselytizing. It is the cause of much avoidable conflict between classes and unnecessary heart-burning among missionaries. But I should welcome people of any nationality if they came to serve here for the sake of service. In Hindu households the advent of a missionary has meant the disruption of the family coming in the wake of change of dress, manners, language, food and drink.

Is it not the old conception you are referring to? No such thing is now

associated with proselytization.

The outward condition has perhaps changed but the inward mostly remains Vilification of Hindu religion, though subdued, is there. If there was a radical change in the missionaries' outlook, would Murdoch books be allowed to be sold in mission depots? Are those books prohibited by missionary societies? There is nothing but vilification of Hinduism in those books. You talk of the conception being no longer there. Only the other day a missionary descended on a famine area with money in his pocket, distributed it among the famine-stricken, converted them to his fold, took charge of their temple and demolished it. This is outrageous. The temple could not belong to the converted Hindus, and it could not belong to the Christian missionary. But this friend goes and gets it demolished at the hands of the very men who only a little while ago believed that God was there."

6. He has also drawn our attention to the issue raised in the Constituent Assembly that conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law. The question was answered by the Hon'ble Sardar Vallabhbhai J. Patel in the following terms:

"The Committee discussed this and there were several other suggestions made by the House and the clause was referred back to the Committee. After further consideration of this clause, which enunciates an obvious principle, the Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it can be illegal at any time."

7. Relying upon the aforesaid observations, Dr. Subramanian Swami contends that conversions are against Hindu philosophy and, therefore, should not be permitted. We are of the considered view that the issues raised by Dr. Subramanian Swamy are more philosophical in nature. The question whether conversions should be permitted or not is not for the Court to decide. We have to decide the present cases on the basis of the legal submissions. Conversions in our country are permissible if the conversion is by the free will of the converttee. We are also of the opinion that each and every citizen of this country has a right not only to follow his own beliefs but also has a right to change his beliefs.

8. A comparative analysis of the Himachal Pradesh Act, the Madhya Pradesh Act and the Orissa Act shows that the definitions of the words "conversion", "force", "fraud" and "minor" are identical in all the three Acts. In the Madhya Pradesh Act, the word 'allurement' has been used to describe offer of any temptation in the form of any gift or gratification either in cash or kind or grant of any material benefit, either monetary or otherwise. In the Himachal Pradesh and Orissa Acts, instead of the word 'allurement' the word 'inducement' has been defined, but the definition is identical. In most other aspects also, all the three Acts are identical.

9. The Apex Court in the case referred to above has upheld the right to propagate a religion, but at the same time, in no uncertain terms has also held that the right to propagate one's own views does not give any person the right to convert anybody else except if the person converts of his own free will.

10. Propagation can take place in many manners. Today in this electronic world we are flooded with religious channels on the electronic media. There are many god men floating all over the country espousing different religions and beliefs. Nobody can stop their activities as long as they act within the bounds of law. What the main provisions of the Act do is to prevent conversion by "force", "fraud" or "inducement". These provisions have already been upheld by the Apex Court, though in the context of Madhya Pradesh and Orissa Acts. Therefore, the petitioners cannot be permitted to challenge those provisions of the Act, which are identical to the provisions of the Madhya Pradesh and Orissa Acts.

11. Though many issues have been raised before us, we are not even entertaining

the same in view of the pronouncement of the Apex Court referred to above. We may, however, to be fair to the petitioners and Mr. Sudhir Nandarajog, learned senior counsel for the petitioners, make reference to the issues raised.

12. It has been urged before us that the definition of the words "force", "fraud" and "inducement" are very vague and liable to be misused. Merely because a definition is liable to be misused does not mean that the Act should be struck down. As and when the provisions of the Act are misused, the affected party can approach the Court for redressal. In any event, all these matters stand squarely covered by the judgment in the cases referred to above and, therefore, such arguments cannot be permitted to be raised before us.

13. It has also been urged before us that Article 13(2) prohibits the Legislature from enacting any law which infringes the rights guaranteed under Part III of the Constitution which would include Article 25 of the Constitution of India. It has also been urged before us that there are two proselytizing religions, i.e. Islam and Christianity - to spread the word of God is an inherent part of these religions and, therefore, the State cannot put any restriction on this religious practice of proselytization. We cannot accept this argument because the Apex Court in no uncertain terms has held that though the right to propagate may be a fundamental right, but there is no fundamental right to convert.

14. We are proud of our multi-cultural heritage where people belonging to all religions, thoughts and beliefs have amalgamated into our society. Indian culture is such that we have accepted into our fold believers and non-believers. Indian Society has not discriminated against any religion or thought. At the same time, we cannot permit religions, which advance proselytization and encourage conversions, to carry out these conversions by "force", "fraud" or "inducement".

15. Christianity entered and flourished in India right from the time when St. Thomas Aquinas came to India in 52 A.D. Jews found asylum in India both in Kochi in Kerala and in the North Eastern parts of the country. Zoroastrians entered India at Navsari to escape persecution in Persia. Today, though the number of Jews may have dwindled, Christians and Parsis have flourished and attained high offices in the country. Islam is now the second largest religion of the country. Though, by peaceful propagation, each religion may expand the number of its followers, there have to be limitations on the manner in which conversions are carried out and no civilized society can permit conversions to be carried out by "force", "fraud" or "inducement". The word of God cannot be spread either through the sword or by the use of money power.

16. The right to propagate one's religion may entitle a person to extol the virtues of the religion which he propounds. He, however, has no right to denigrate any other religion, thought or belief. One may promise heaven to the followers of one's religion, but one cannot say that damnation will follow if that path is not followed. The essence of secularism is tolerance and acceptance of all religions. The right to propagate can never include the right to denigrate any other thought, religion or belief. Therefore, though the right to propagate may be a fundamental right but the right to convert, as held by the Apex Court, is not a fundamental right.

17. Religion is a matter of faith and belief, but all religions do not believe in 'God'. Reference in this behalf may be made to the judgment of the Apex Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282, wherein the Apex Court made the following pertinent observations:

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who

profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

18. In *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388, the Apex Court again observed as follows:

"It may be noted that 'religion' is not necessarily theistic and in fact there are well-known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well."

19. The right of freedom of opinion, the right of freedom of conscience by themselves include the extremely important right to disagree. Every society has its own rules and over a period of time when people only stick to the age old rules and conventions, society degenerates. New thinkers are born when they disagree with well accepted norms of society. If everybody follows the well-trodden path, no new paths will be created, no new explorations will be done and no new vistas will be found. We are not dealing with vistas and explorations in the material field, but we are dealing with higher issues. If a person does not ask questions and does not raise issues questioning age old systems, no new systems would develop and the horizons of the mind will not be expanded. Whether it be Budha, Mahavira, Jesus Christ, Prophet Mohammad, Guru Nanak Dev, Martin Luther, Kabir, Raja Ram Mohan Roy or Swami Dayanand Saraswati, new thoughts and religious practices would not have been established, if they had quietly submitted to the views of their forefathers and had not questioned the existing religious practices, beliefs and rituals.

20. In a secular country, every belief does not have to be religious. Even atheists enjoy equal rights under our Constitution. Whether one is a believer, an agnostic or an atheist, one enjoys complete freedom of belief and conscience under our Constitution. There can be no impediments on the aforesaid rights except those permitted by the Constitution. This right of freedom of conscience and belief also includes the very important right to change one's own belief. Every person has a right to question the beliefs of others in a civilized manner without deriding or casting aspersions on the beliefs of the others. Every human being also has a right to question and change his own belief. However, this change must be an act of his own conscience - an act which has come from within himself, an act uninfluenced by "force", "fraud" or "inducement". If a person changes his religion or belief of his own volition then the State has no role to play. On the other hand, if persons are made to change their religion due to "force", "fraud" or "inducement", this would wreck the very basic framework of our society and lead India to total annihilation. No law can be permitted to be interpreted in such a manner that the very being of our secular country is put at stake.

21. The right to dissent is one of the most important rights guaranteed by our Constitution. As long as a person does not break the law or encourage strife, he has a right to differ from every other citizen and propagate what he believes is his belief. *A.D.M. Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521, is a shining example of a dissent which is much more valuable than the opinion of the majority.

22. Coming to the provisions of the Act and the Rules, which are not found in the

Madhya Pradesh and Orissa Acts, we may refer to Section 4 of the Himachal Pradesh Act, which reads as follows:

"4. (1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into all by such agency as he may deem fit:

Provided that no notice shall be required if a person reverts back to his original religion.

(2) Any person who fails to give prior notice, as required under sub-section (1), shall be punishable with fine which may extend to one thousand rupees."

23. Section 8 of the Act empowers the State to frame rules, which have to be placed before the Legislative Assembly and we are concerned with Rules 3, 4, 5 and 6, which read as follows:

"3. Notice before conversion- (1) Any person domiciled in the State, intending to convert his religion, shall give a notice to the District Magistrate of the District in which he is permanently resident, prior to such conversion, in Form-A.

(2) The District Magistrate shall cause all notices received under sub-rule (1) of rule 3 to be entered in a Register of Notices and Complaints of conversion in Form-B, and may within fifteen days from the receipt of said notice, get the matter enquired into by such agency as he may deem fit and record his findings as regards the particulars of notice given:

Provided that the person giving notice and any other person likely to be prejudicially affected shall be given adequate opportunity to associate himself with any such enquiry.

4. Inquiries in other cases - Where on the basis of any complain or any information laid before him, the District Magistrate is of the opinion, for reasons to be recorded,-

(a) that force or inducement have been used or is likely to be used in any conversion within the local limits of his jurisdiction; or

(b) that a conversion has taken place without notice in contravention of the provisions of this Act, he may cause an inquiry to be made in the matter and proceed in the manner as provided in Rule 3.

Every such complaint so received shall be entered in the Register of Notices and Complaints of conversion in Form-B.

5. Registration and Investigation of Case - If after enquiry under rule 3 or rule 4, as the case may be, the District Magistrate records a finding that a conversion has taken place or is likely to take place through the use of force or inducement or without the requisite notice, he shall enter the particulars of the case in the Register of Forced Conversion in Form-C and refer the case alongwith all material adduced during the course of the enquiry to the Police Station in which the person is resident or where the conversion is intended or done for registration of a case and its investigation

6. Sanction for Prosecution - If after investigating the matter, it appears that an offence under Sub-section (2) of section 4 or under section 5 has been committed, the Investigation Officer shall place all relevant material before the authority empowered under Section 7 to grant prosecution sanction and such sanction shall be granted or refused within a period of 7 days, giving reasons in writing."

24. An important issue which has been raised in these cases is with regard to the right to privacy of a person wanting to change his beliefs. Section 4 of the Himachal Pradesh Act lays down that a person intending to convert from one religion to another should give notice thirty days prior to his conversion to the District Magistrate of the District concerned, who shall get the matter enquired into by such agency as he may

deem fit. The proviso to Section 4(1) lays down that no notice shall be required if a person reverts back to his original religion. In case of violation of sub-section (1) of Section 4, the person, who fails to give notice, would be punishable with fine which may extend up to Rs. one thousand.

25. Rule 3 provides that any person domiciled in the State, intending to convert his religion, shall give notice to the District Magistrate of the District in which he is permanently resident, prior to such conversion, in Form-A. Thereafter, the District Magistrate is required to cause all notices to be entered in a Register of Notices and Complaints in Form-B and within fifteen days from the receipt of notice may get the matter enquired into by such agency as he deems fit and record his findings as regards the particulars of notice given. The proviso lays down that the District Magistrate, before passing any order, must give adequate opportunity in the enquiry to the person giving notice and any other person who is likely to be prejudicially affected.

26. Rule 5 lays down that if the District Magistrate is of the opinion that the conversion has taken place or is likely to take place through use of force or inducement or without requisite notice, he shall refer the case alongwith all material adduced in the course of the enquiry to the police for registration of a case and its investigation. The prosecution sanction can be given by the District Magistrate or such authority authorized by him not below the rank of Sub Divisional Officer.

27. In this case, the main issue with which we are concerned is whether the fundamental rights of the person, who is converting (hereinafter referred to as the converttee), are being adversely affected by Section 4 and Rules 3 and 5?

28. We may, at this stage itself, point out that neither the Madhya Pradesh Act nor the Rules made thereunder provide that the converttee should give notice before conversion. In the Madhya Pradesh Act, it is the person who is converting any other person from one religious faith to another, such as a religious priest, who is required to give notice of such conversion to the District Magistrate. Every conversion may not entail the performance of a ceremony. True it is, that in some religions, before initiation into the religion, some ceremony has to be performed, but this is not applicable to all religions.

29. Under the Orissa Act, there is also no provision for giving advance notice by the converttee. However, Rule 4 of the Orissa Freedom of Religion Rules, which were enacted in the year 1999, reads as follows:

"Any person intending to convert his religion, shall give a declaration before a Magistrate, 1st Class, having jurisdiction prior to such conversion that he intends to convert his religion on his own will."

30. As per this rule, any person intending to convert his religion is directed to give a declaration before a Magistrate 1st Class prior to such conversion that he intends to convert his religion of his own free will. There is no time period prescribed. The non-filing of such declaration is not an offence. Under Rule 8 of the Orissa Rules, only contravention of Rules 5 and 6 is an offence, but contravention of Rule 4 is not an offence.

31. Therefore, we find that the Himachal Pradesh Act has gone much further than the Madhya Pradesh or Orissa Acts as far as the converttee is concerned. We have earlier discussed that our Constitution ensures that no person living in India can be denied equality under the law or the benefits of Part-III of the Constitution of India and every person is entitled to his freedoms, which are guaranteed under Part-III of the Constitution of India. These rights, which are commonly known as fundamental rights, are, in fact, human rights. These rights inhere in every human being and in every civilized society, we must respect such rights. The right to privacy is one of such rights and has been the subject matter of interpretation in a number of cases.

32. In *Govind v. State of Madhya Pradesh*, AIR 1975 Supreme Court 1378, the Apex Court after discussing various articles and decisions of the Courts, both from India and abroad, held as follows:

"22. There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does not find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test. Then the question would be whether a state interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible state interest, the characterization of a claimed right as a fundamental privacy right would be of far less significance. The question whether enforcement of morality is a state interest sufficient to justify the infringement of a fundamental privacy right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of state."

23. Individual autonomy, perhaps the central concern of any system of limited government, is protected in part under our Constitution by explicit constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be". Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values."

24. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty."

25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy."

33. In *R. Rajagopal alias R.R. Gopal v. State of Tamil Nadu*, AIR 1995 Supreme Court 264, examining the concept of right to privacy, the Apex Court held as follows:

*"24. We may now consider whether the State or its officials have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials, as the case may be? We think not. No law empowering them to do so is brought to our notice. As observed in *New York Times v. United States* ((1971) 403 US 713), popularly known as the pentagon papers case, "any system of prior restraints of (freedom of) expression comes to this Court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carries a heavy burden of showing justification for the imposition of such a restraint." We must accordingly hold that no such prior restraint or prohibition of publication can be imposed by the respondents upon the proposed publication of the alleged*

autobiography of 'Auto Shankar' by the petitioners. This cannot be done either by the State or by its officials. In other words, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint upon the publication of the alleged autobiography of Auto Shankar. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein.

25. We must make it clear that we do not express any opinion about the right of the State or its officials to prosecute the petitioners under Sections 499/500, I.P.C. This is for the reasons that even if they are entitled to do so, there is no law under which they can prevent the publication of a material on the ground that such material is likely to be defamatory for them."

*34. Our attention has also been drawn to the judgment of the Delhi High Court in *Pranav Kumar Mishra v. Government of NCT of Delhi*, WP (C) No. 748 of 2009, decided on 08.04.2009. In this case, the petitioners, by means of the writ petition, had challenged the practice of posting the notice of intended marriage under the Special Marriages Act, 1954, at the residential address of both parties to the marriage as also through the Station House Officer of the police station concerned for the purpose of verification of address. The petitioners, who were of marriageable age, prayed that they do not want that such notices be sent to their residences.*

35. The Delhi High Court after considering the rival contentions came to the conclusion that there is no requirement of posting of notice to the applicants' addresses and held that the dispatch of such notices would amount to breach of their right to privacy and held as follows:

*"8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting of notice to applicants' addresses or service through the SHO, or visit by him is prescribed in either the Act or the website. The petitioner's concerns and apprehensions are justified. Absent any legal compulsion - as is the position - for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to (Ref *Govind v. State of M.P.*, (1975) 2 SCC 148, *R. Rajgopal v. State of T.N.* (1994) 6 SCC 632, *District Registrar and Collector v. Canara Bank* (2005) 1 SCC 496.*

9. It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."

One of the considerations, which weighed with the Delhi High Court was that, in fact, the life and limb of the parties solemnizing marriage against the wishes of the parents would be endangered and the marriage would be jeopardized, if such notices were sent.

*36. The Apex Court in *Ram Jethmalani v. Union of India*, (2011) 8 Supreme Court Cases 1, was dealing with a case where the petitioner wanted that the names of those Indian citizens, who had stashed away huge amounts of illegally begotten money in Banks in Abroad may be published. The Apex Court dealing with the right to privacy held as follows:*

"83. Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner. We understand and appreciate the fact that the situation with respect to unaccounted for

monies is extremely grave. Nevertheless, as constitutional adjudicators we always have to be mindful of preserving the sanctity of constitutional values, and hasty steps that derogate from fundamental rights, whether urged by Governments or private citizens, howsoever well meaning they may be, have to be necessarily very carefully scrutinised. The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values.

.....
88. *The revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals. We cannot remain blind to such possibilities, and indeed experience reveals that public dissemination of banking details, or availability to unauthorised persons, has led to abuse."*

37. A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret. No doubt, the right to privacy is, like any other right, subject to public order, morality and the larger interest of the State. When rights of individuals clash with the larger public good, then the individual's right must give way to what is in the larger public interest. However, this does not mean that the majority interest is the larger public interest. Larger public interest would mean the integrity, unity and sovereignty of the country, the maintenance of public law and order. Merely because the majority view is different does not mean that the minority view must be silenced.

38. It has been strongly urged By Mr. R.K. Bawa, learned Advocate General, on behalf of the State that the right to privacy is not an indefeasible right. There can be no quarrel with this proposition. However, the State must have material before it to show what are the very compelling reasons which will justify its action of invading the right to privacy of an individual. A man's home is his castle and no invasion into his home is permissible unless justified on constitutional grounds. A man's mind is the impregnable fortress in which he thinks and there can be no invasion of his right of thought unless the person is expressing or propagating his thoughts in such a manner that it will cause public disorder or affect the unity or sovereignty of the country.

39. Why should any human being be asked to disclose what is his religion? Why should a human being be asked to inform the authorities that he is changing his belief? What right does the State have to direct the converttee to give notice in advance to the District Magistrate about changing his rebellious thought?

40. A person's belief or religion is something very personal to him. The State has no right to ask a person to disclose what is his personal belief. The only justification given is that public order requires that notice be given. We are of the considered view that in case of a person changing his religion and notice being issued to the so called prejudicially affected parties, chances of the converttee being subjected to physical and psychological torture cannot be ruled out. The remedy proposed by the State may prove to be more harmful than the problem.

41. In case such a notice is issued, then the unwarranted disclosure of the voluntary change of belief by an adult may lead to communal clashes and may even endanger the life or limb of the converttee. We are not, in any manner, condoning or espousing conversions especially by "force", "fraud" or "inducement". Any conversion, which take place by "force", "fraud" or "inducement", must be dealt with strictly in accordance with law which we have held to be valid. At the same time, the right to privacy and the right to change the belief of a citizen cannot be taken away under the specious plea that public order may be affected. We are unable to comprehend how the issuance of a notice by a converttee will prevent conversions by "fraud", "force" or "inducement". In fact, this may open a Pandora's box and once notice is issued, this

may lead to conflicts between rival religious outfits and groups. No material has been placed on record by the State to show that there has been any adverse effect on public order by any conversion in the State whether prior to or after the enactment of the Himachal Pradesh Act. In fact, till date only one case has been registered under this Act.

42. As observed by us above, conversions may not require any ceremony in some religions and how will the Government determine when the thought process of a person has changed. A person who belongs to A religion and willingly wants to convert to B religion will not change his religion overnight, except in case of forced conversions or conversions which take place due to payment of cash or other material gifts. Change of religion, when it is of its own volition, will normally be a long drawn out process. If a person of his own volition changes his religion, there is no way that one can measure or fix the date on which he has ceased to belong to religion A and converted to religion B. This has to be an ongoing process and therefore, there can be no notice of thirty days as required under the Himachal Pradesh Act.

43. Furthermore, we are of the view that the proviso to Section 4 is also discriminatory and violative of Article 14 of the Constitution of India. "Original religion" has not been defined in the Himachal Act. According to Dr. Subramanian Swamy, the original religion is Hindu religion alone. We cannot accept this submission of his. The general consensus of opinion used was that the original religion would be the religion of the converttee by birth, i.e. the religion he was born into.

44. We fail to understand the rationale why if a person is to revert back to his original religion, no notice is required. It was urged before us that since he was born in his religion and knows his religion well, therefore, it was thought that while reverting back to his original religion, no notice be issued. This argument does not satisfy the parameters of Article 14 of the Constitution of India. Supposing a person born in religion A converts to religion B at the age of 20 and wants to convert back to religion A at the age of 50, he has spent many more years, that too mature years, being a follower of religion B. Why should he not be required to give notice?

45. Another question which is troubling us is if a person born in religion A, converts to religion B, then converts to religion C and then to religion D. If he converts back to religion B or C, he is required to give notice, but if he converts back to religion A, then no notice is required. This also, according to us, is totally irrational and violative of Article 14 of the Constitution of India.

46. We also fail to understand why a person, who fails to give such notice, should be required to pay a fine, which may extend up to Rs. 1,000/-. We can understand the feelings of the State in enacting the law. We are also of the view that conversion by "force", "fraud" or "inducement" should be dealt with strictly and should be discouraged. But, by and large, it is the poor and the down-trodden, who are converted by "force", "fraud" or "inducement". By enacting Section 4 and making the non-issuance of the notice a criminal offence, the State has, in fact, made these poor and down-trodden people criminals, whereas the main thrust of the Act should have been to deal strictly with the persons who convert people by "force", "fraud" or "inducement".

47. We also found many flaws in the Rules. Rule 3 requires that any person domiciled in the State intending to convert must give notice to the District Magistrate of the District of which he is a permanent resident. Supposing a person is a permanent resident of District Shimla, who is staying in Delhi. He decides to convert at Delhi. The conversion, if any, would take place at Delhi. The State of Himachal Pradesh has no jurisdiction over the Union Territory of Delhi. In Delhi, there is no law corresponding to the H.P. Freedom of Religion Act. If such conversion is not illegal in Delhi, why should such person be required to give notice in Himachal Pradesh? How can such a person be

virtually treated to be a criminal when the act of conversion is legal at Delhi? There are other flaws also in the Rules inasmuch as they are totally vague and do not specify the agency, through which the District Magistrate should carry out the enquiry. But, since we are of the view that Section 4 itself is ultra vires the Constitution of India, the corresponding rules must fall and we need not go into a detailed discussion of those rules.

CWP No. 4716 of 2011

48. As far as CWP No. 4716 of 2011 is concerned, one of the issues raised is that the prosecution of the petitioner is totally illegal. We found that the prosecution was initiated many years back. More than three years have been expired and the criminal case is at the stage of evidence. Therefore, without expressing any opinion on the merits of the case, we dispose of the writ petition with a direction that the case No. RBT 50/3 of 2011/08 shall stand transferred to the Court of Chief Judicial Magistrate, Shimla, who is further directed to ensure that the proceedings in this case are completed latest by 31st December, 2012.

49. In view of the above discussion, we allow the petitions to a limited extent and strike down Section 4 of the Himachal Pradesh Freedom of Religion Act, 2006 and Rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007 as being violative of Article 14 and ultra vires the provisions of the Constitution of India. Rule 5 only insofar as it relates to actions relating to Section 4 is also held to be ultra vires. However, all other provisions of the Act and the Rules are held to be legal and valid. Both the petitions are disposed of in the aforesaid terms. No order as to costs.

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IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

I.A NO. _____ OF 2020

IN

WRIT PETITION (CRIMINAL) NO. _____ OF 2020

IN THE MATTER OF:

CITIZENS FOR JUSTICE AND PEACE

THROUGH SECRETARY

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH & ORS.

...RESPONDENTS

APPLICATION SEEKING STAY OF THE IMPUGNED LAWS

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE ABOVE NAMED
PETITIONER / APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner / Applicant is filing the accompanying Writ Petition praying for an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 Himachal Pradesh Freedom of Religion Act, 2019 and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 and the Madhya Pradesh Freedom of Religion Ordinance, 2020, which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court. That the Applicant seeks leave to rely upon the contents of the accompanying Writ Petition for the sake of brevity.
2. That since the time the impugned laws have come in to force, there have been several instances of undue harassment and violence under the garb of these laws.
3. That it can be seen from the news reports annexed to the Writ Petitions at Annexures P-11 and P-14, that the police has been intervening in marriage ceremonies being conducted between consenting adults, solely based on rumours. In fact in one of these cases, both the parties were from the same religion and yet the police had interfered and harassed the parties.
4. That in case the impugned laws are not stayed, the harassment and violence based on these unconstitutional and illegal laws will continue, violating the fundamental rights of the citizens of this country.
5. That personal liberty and freedoms enshrined under Part III of the

Constitution of India ought not to be shackled and crippled by way of arbitrary and unjust laws.

6. That the present Application is bona fide and made in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Stay the operation of Uttarakhand Freedom of Religion Act, 2018;
- b) Stay the operation of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020;
- c) Stay the operation of Himachal Pradesh Freedom of Religion Act, 2019 ultra vires of the Constitution of India;
- d) Stay the operation of Madhya Pradesh Freedom of Religion Ordinance, 2020;
- e) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER /
APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.**



MS. TANIMA KISHORE

Advocate-on-Record for the Petitioner

IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION

I.A NO. _____ OF 2020

IN

WRIT PETITION (CRIMINAL) NO. _____ OF 2020

IN THE MATTER OF:

CITIZENS FOR JUSTICE AND PEACE

THROUGH SECRETARY

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

**APPLICATION SEEKING EXEMPTION FROM FILING DULY
AFFIRMED AFFIDAVIT AND VAKALATNAMA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

**THE HUMBLE PETITION OF
THE ABOVE NAMED
PETITIONERS / APPLICANTS**

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner / Applicant is filing the accompanying Writ Petition praying for an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 (**The Act**) and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (**The Ordinance**) which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court.
2. That in view of the pandemic in the country, the Petitioner has not been able to hand over the original affidavit to the advocate on record. The Petition is being filed with the scanned copy of the same and they would be replaced by the original at the earliest possible time.
3. Similarly, the Petitioner has been unable to hand over the original Vakalatnama to the advocate on record. The Petition is being filed with the scanned copy of the same and they would be replaced by the original at the earliest possible time.
4. That consent is given for the matter to be taken up through video-conferencing mode. The Advocate-on-Record will connect through her own desktop/mobile for the hearing.
5. That the present Application is bona fide and made in the interest of justice

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Grant exemption from filing the original duly affirmed and scan affidavit in the prevailing circumstances;
- b) Grant exemption from filing duly signed vakalatnama in the prevailing circumstances;
- c) Take on record the scanned affidavit and vakalatnama;

d) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS /
APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.**



TANIMA KISHORE

Advocate-on-Record for the Petitioners

AOR Code: 2867

Email: tanima.kishore@gmail.com

Phone: (+91) 8447644191

Place: New Delhi

Filed on: 14.12.2020

