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# A CRITICAL ANALYSIS OF ANTI-CONVERSION LAWS IN INDIA WITH SPECIAL REFERENCE TO 'LOVE-JIHAD'

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**Abstract**

Article 25 of the Constitution of India guarantees 'Freedom of conscience and free profession, practice and propagation of religion'. Some members of the Constituent assembly were concerned that the right to propagate would facilitate forced conversions, and proposed amendments that would either remove the right to propagate altogether or limited the right to practice religion to the private domain. Others argued that forced conversions did not come within the ambit of this right; further, free propagation would also lead to public awareness about different religions, thereby promoting understanding and peace. These amendments to remove propagation of religion were rejected[i]. Seeing increasing number of cases of unlawful conversion, it is very much obvious that the fear of those members of Constituent Assembly has become alive. The term 'love-jihad' has been the talk of the town recently. Referring to increased cases of love-jihad , the State Government of UP and MP enacted anti-conversion laws.

The paper discusses the anti-conversion laws of different states. Validity of anti-conversion laws has been checked on the parameter of the Constitution. The paper draws important conclusion and suggestions for balance between freedom of religion and enactment of anti-conversion law.

**Keyword: Conversion, Freedom, Propagation, Right, Religion, Anti-Conversion, Marriage, Ceremony.**

## Introduction

India is a country of diversity where wide range of caste, creed, religion and faith exists together. The Constitution of India guarantees 'Freedom of conscience and free profession, practice and propagation of religion'[ii].By the 42nd Constitution Amendment, the word 'secular' has been introduced in the Preamble of Constitution. The debate over the issue of secularism and religious identity has been a contentious topic in India before and after independence. It is well established that Indian Constitution has provisions that ensure a secular state and freedom of religion to all the persons. The freedom given in the Article 25 of Indian Constitution is not absolute; it is subject to the restrictions as public order, health, morality and other fundamental rights.

It is decided in the case of **S.R. Bommai vs. Union of India**[iii] that secularism is the basic structure of Indian Constitution. Ramaswami J. observed that in Indian context meaning of secularism is not anti God, it is positive. The State is neither in favor of any religion nor resists any religion. The State is neutral in terms of religion and treats all religions equally.

Right to conversion is also included in free profession of religion. It is the choice of individual to adopt and practice any religion but the conversion caused by deceiving and dishonest means is not permitted in the Constitution. Unlawful or deceit conversion is also a challenge for law and order. In India like other traditional societies, people are connected with their religious identity very sentimentally and when these sentiments are injured, problem arises. Sometimes people get aggressive and disturb the public order.

The demand for law to stop proselytisation has been going on for a long time. Even in the British Raj, this law was demanded by the people, but the British government did not pay attention to it. After the establishment of British raj in 1930s and 40s, several princely states formed anti conversion laws to protect hindu religious identity from British missionaries. At the national level many times attempts was made to enact a Central legislation over this subject. Several private bill has been presented in the Parliament since independence . The Indian Conversion (Regulation and Registration) Bill was introduced in 1954 to regulate the missionaries. The bill has the provisions for licensing of missionaries and the registration of conversion. In 2015, the NDA government tried to bring such an anti-conversion law but its own law ministry refused on the ground that it was a state subject and, therefore, a national law cannot be enacted.

Love Jihad is a conspiracy theory, developed by proponents of Hindutva that is used to invoke prejudice against Muslims The conspiracy theory purports that Muslim men target Hindu women for conversion to Islam by means such as seduction, feigning love, deception, kidnapping, and marriage, as part of a broader "war" by Muslims against India, and an organised international conspiracy, for domination through demographic growth and replacement.[iv] States have formed anti conversion laws to protect people from deceived conversion which are discussed below.

## Analysis of Anti- Conversion Law of Different States

### Uttar Pradesh

The Government of Uttar Pradesh on 27 november,2020 has passed The Uttar Pradesh (UP) Prohibition of Unlawful Conversion of Religion Ordinance 2020.This Ordinance regulates religious conversion and prohibits religious conversion caused by force, undue influence, misrepresentation, coercion etc. The Preamble of the Ordinance clearly states the object of the Ordinance is to provide for unlawful conversion from one religion to another by misrepresentation, force undue influence, coercion, allurement or by any fraudulent means or by marriage. It is mere thirteen section Ordinance to tackle with the unlawful conversion of religion Section 1 of the Ordinance states this ordinance may be called The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.It shall extends to the whole of Uttar Pradesh.

Section 2 of the ordinance deals with various definition used in ordinance. Section 2(a) of the ordinance defines ‘Allurement’. According to this section, allurement means and it includes offer of any temptation in the form of gift gratification easy money or material benefit either in cash or kind, employment, free education in reputed school run by any religious body or better lifestyle divine displeasure or otherwise. The definition of allurement is very wide and includes all possible form of lure by which a person can be misguided. Section 2(b) provides the meaning of ‘Coercion’. According to this section 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. Section 2(c) defines ‘conversion’ as renouncing one’s religion and adopting other religion when two or more than two persons are converted it is called mass conversion.[v]

Section 2(d) of the Ordinance defines the term force as a show of force or a threat of the bodily injury of any kind to the person converted or sought to be converted. This ordinance also defines 'fraudulent means' as if someone pretend to be another by surname, religious symbol or otherwise[vi].The word religion is also defined in this Ordinance to make it more clear and unambiguous. 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.[vii]

Section 2(i) of the ordinance provides an important definition of term 'Religion converter' as person of any religion who performs any act of conversion from one religion to another such as Father, Maulvi, Karmkandi, etc. Undue influence is defined in section 2(j) as unconscientious use of power or influence by one person over another to persuade the other to act in accordance with the will of the person exercising such influence. Last but least definition of 'Conversion' has been provided in this ordinance as any conversion which is not in accordance with law of the land.

Substantial part of the Ordinance starts from the section 3 onwards. Section 3 prohibit the conversion of religion in some circumstances it states 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. Proviso of this section excludes the reconversion to his immediate previous religion from conversion.

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. 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.

In case any person contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe, he 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. If any person contravenes the provisions of section 3 in respect of mass conversion, he 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. 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 under this Ordinance[viii]. According to section 4 of this Act, any aggrieved person, his/her parents, brother, sister, or any other person who is related to him/herby blood, marriage or adoption may lodge a First Information Report of such conversion which contravenes the provisions of section 3.

The most controversial section of this ordinance is section 6 which is declareing a marriage void if it is performed for the sole purpose of unlawful conversion or conversion done for the sole purpose of marriage. Section 6 states that anny marriage which was done for 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.

Section 7 of the Ordinance makes it more harsh and strict as it says that all the offences under this Ordinance shall be Cognizable and non-bailable and triable by the Court of Sessions.

The Ordinance also provides the procedure of conversion, if anyone wants to convert his religion with his free will then he has to follow the procedure as given in the section 8 of the ordinance. According section 8(1), if a person wants to change his religion, then he must declare to the District Magistrate or the Additional District Magistrate specially authorized by District Magistrate, at least 60 days before in the prescribed format given in schedule-I of the ordinance that he wants to change his religion with his free consent and without any force, coercion, undue influence or allurement.

Sub clause (2) of section 8 imposes an obligation over the religious converter who performs conversion ceremony for converting any person of one religion to another religion too. He

shall give one month's advance notice in the form prescribed in Schedule-II of ordinance 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. The District Magistrate, after receiving the information shall get an enquiry conducted through police with regard to real intention, purpose and cause of the proposed religious conversion. Contravention of sub-shall have the effect of rendering the proposed conversion, illegal and void.

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. 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[ix].

The provisions pertaining to declaration post conversion of religion are stated in section 9. Section 9(1) provides that the converted person shall send a declaration in the form prescribed in Schedule-III of the ordinance within sixty days of the date of conversion, to the District Magistrate of the District in which converted person resides ordinarily. The District Magistrate shall exhibit a copy of the declaration on the notice board of the office till the date of confirmation. The declaration in section 9(1) 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. 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. The contravention of sub-sections 1 to 4 shall have the effect of rendering the said conversion illegal and void[x].

Section 10 provides punishment violation of provisions of Ordinance by an institution or organization. If any institution or organization violates the provisions of this Ordinance, the person or persons in charge of the affairs of the organisation 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 and the state government also not provide any financial aid to such institutions.

Section 12 of this ordinance makes it rigorous it shifts the burden of proof that a conversion is willful and not caused by any falseful means to the person who has caused the conversion. The section states that The burden of proof as to whether a religious conversion was not 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.

## Himachal Pradesh

In August 2019, Himachal Pradesh State Assembly tabled and passed The Himachal Pradesh Freedom of Religion Act, 2019.The Act came into force on 18th December 2019 to replace The Himachal Pradesh Freedom of Religion Act 2006. Thus, in order to check forcible conversions of religion in the state and to preserve the peaceful atmosphere, it was decided to bring an effective legislation in place of The Himachal Pradesh Freedom of Religion Act 2006[xi].It is a sixteen section Act to deal with the unlawful conversion in the territory of Himachal Pradesh. Section 1 of the Act states this Act may be called The Himachal Pradesh Freedom of Religion Act, 2019.This Act came into force on 18th December 2020.

Section 2 provides important definition used in this act. Section 2(a) definies 'Coercion' as compelling an individual to act against his will by use of psychological pressure or physical force causing bodily injury or threat thereof. Conversion means When a person renounce his religion and adopting another[xii].'Fraudulent' has defined in section 2(c) it means to do a thing with intent to defraud. Section 2(d) of the act provides inclusive definition of 'Force'. According to this section "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. Inducement has defined in section 2(f) it 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. Defnition of

'Religion' has been given in Section 2(i) of the Act. It 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. A 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[xiii] shall be known as "Religious priest". Undue influence has been defined in section 2(k) it 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.

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[xiv] But if a person re-converts to his parent religion, it shall not be deemed to be a conversion. The penalty for conversion or attempt to convert any person shall be imprisonment for a term, which shall not be less than one year but which may extend to five years and fine.[xv] If such conversion or attempt is in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe, such person who attempts or converts 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. 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.[xvi]

Section 5 provides that 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.

Every petition under section 5 for declaring a marriage null amd void 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 the marriage was solemnized; or the respondent, at the time of the presentation of the petition, resides; or the parties to the marriage last resided

together; or in case the wife is the petitioner, where she is residing on the date of presentation of the petition.

In case any person desires to be converted to other religion or the religious priest, who performs purification Sanskar or conversion ceremony for converting any person of one religion to another religion, he shall give a declaration at least one month in advance 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. However, no notice shall be required if a person re-converts to his parent religion. The District Magistrate, after receiving the information shall conduct an inquiry through police or other agency with regard to intention, purpose and cause of proposed conversion.[xvii]

In case a person contravenes the provisions of Section 7, such conversion shall be null and void. If a person fails to provide one month advance report as provided, he 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. In case a priest fails in observing the pre report procedure, he 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. 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.[xviii]

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 may be cancelled after giving a reasonable opportunity of being heard. 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[xix]

## Madhya Pradesh

The State Government enacted Madhya Pradesh Freedom of Religion ordinance 2020 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. The ordinance nullifies the Madhya Pradesh Dharma Swatantrya Adhiniyum, 1968, and rules made therein under section 17 (1). The Governor of Madhya Pradesh gave her assent to the Bill on 26th March 2021. The Law has been published in the gazette notification on 27th March 2021

No one can convert or attempt to convert a person directly or indirectly by use of **allurement, misrepresentation, use of threat or force, undue influence, coercion, marriage, or any fraudulent means** nor can abet or conspire such conversion. If anyone contravenes this provision, then such conversion shall be deemed null and void.[xx] Under the Act until and unless a written complaint is filed the inquiry or investigation of infringement cannot be processed under section 3. The complaint can be filed by parents, siblings, or with the leave of the court, or by any other person related by blood, marriage, adoption guardianship, or custodianship.

The Act states that if any person infringes the provision under section 3 then that person will be imprisoned for a term of one year which may extend up to five years and shall be liable for the fine of Rs 25,000. The Act further states that if the contravention of section 3 is against minors, women, or scheduled caste and scheduled tribe then the person can be imprisoned for a minimum of two years which may extend up to ten years, and shall be liable for Rs 50,000 as a fine. It also provides that whosoever intends to marry a person of any religion other than professed by him and hides his religion in such a manner that the other believes that his religion is truly the one professed by can be imprisoned for minimum 3 years which may extend up to ten years and shall be liable for Rs 50,000 fine. The Act in Section 5 observes that whosoever indulges in the mass conversion shall be imprisoned a minimum of five years which may extend up to ten years and shall be liable for a fine of Rs. 1,00,000.

Section 6 provides that any marriage performed in contravention of Section 3 shall be null and void. Any child born out of the marriage of contravention of section 3 shall be deemed to be legitimate. The succession to the property shall be regulated according to the law governing by inheritance of the father.[xxi] Under Section 9, the Act gives right of maintenance to the women whose marriage has been declared null and void under section 7 and her children born out of such marriage shall be entitled to maintenance. No police officer below the rank of Sub-

inspector of Police shall investigate any offence registered under the Act. If any person desires to convert his religion willingly, he shall notify to the District Magistrate 60 days prior to the conversion. Any religious priest and/or any person who intends to organize conversion shall also give 60 days prior notice to the District Magistrate of the district where such conversion is proposed. In case the priest fails to give notice, he shall be punished for a term which shall not be less than three years but nay extend to five years and shall also be liable to fine which shall not be less than fifty thousand rupees.

Section 11 provides that where any institution or organization violates any provision of this Act, the person in charge of it shall be liable for punishment. The registration of the institution or organization found guilty can be rescinded by the Competent Authority. All offences under the Act shall be cognizable, non-bailable and triable by the Court of Session.

## Chattisgarh

The State of Chhattisgarh was formed in November,2000 from the southeastern districts of Madhya Pradesh. Chattisgarh has adopted the M.P Dharma Swantantraya Adhiniyam,1968 with the name Chhattisgarh Dharma Swantantraya Adhiniyam [Freedom of Religion],1968. Further in 2006 to make the Act more strict and effective Chattisgarh legislature passed Chattisgarh Dharma Swantantraya (Amendment) Adhiniyam, 2006.

Section 3 prohibits the conversion by falseful means. It states that no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by allurement or by any fraudulent means. Where any person converts or attempts to convert any person, he shall be punishable with imprisonment which may extend to three year or with fine which may extend to twenty thousand rupees or with both[xxii]

An amendment was also made in section 5 of the Act and provision for obtaining prior permission for conversion was made. The amended section 5 of the Chhattisgarh Dharma Swantantraya Adhiniyam states that whoever intends to convert any person from one religious faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony, shall apply for permission at least thirty days before the intended date of such conversion, to the District Magistrate in whose jurisdiction the ceremony is intended to be performed.

The District Magistrate may after inquiry, by an order, permit or refuse to permit any person to convert, any person, from one religious faith to another and such permission shall be valid for two months from the date of its order and whoever violates this provision shall be punished with imprisonment for term which may extend to three years and shall also be liable to fine which may extend to twenty thousand rupees. Any person aggrieved by the order passed by the district magistrate may appeal within thirty days from the date of the order to the District Judge whose decision shall be final. The person so permitted by the District Magistrate shall intimate within one month from date of the ceremony to such District Magistrate, of the fact of such conversion. Whoever contravenes this provisions shall be punished with imprisonment of either description for a term which may extend to one year and also with fine which may extend to ten thousand rupee[xxiii].

After the section 5 three new sections, section 5A, section 5B and section 5C were also inserted in the Act by the amendment Act of 2006. Section 5A of the Act states that whoever attempts to commit any offence punishable under this Act or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punished with the punishment provided for the offence. Section 5B of the Act bars the jurisdiction of civil court. Section 5C provides protection to the state government, its officers or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything done in good faith or intended to be done under the Act or any rule made thereunder. All offences under this act shall be cognizable[xxiv]

## Uttarakhand

The Uttarakhand Freedom of Religion Act, 2018 has been 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. Uttarakhand High Court in the case of **Girish Kumar Sharma v. State of Uttarakhand**[xxv] 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.

Section 3 provides for prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement or marriage. Section 4 states that 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. If the contravention is 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. Every offence committed under this Act shall be non bailable The burden of prove as to whether a religious conversion was not effected through misrepresentation, force, undue influence, coercion, allurement 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.

Section 8 provides for declaration of desire to convert religion at least one month in advance, to the District Magistrate or the Executive Magistrate and if any person fails to give such declaration, he shall be liable to 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. 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 to the District Magistrate and 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 in case of default.

Section 9 provides that every prosecution shall be instituted by any person with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate.'

## Orissa

The Orissa Freedom of Religion Act has been enacted in 1967. It is a seven section based precise Act. The Act prohibits forcible conversion from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion under Section 3. The punishment in case of forcible conversion shall be

imprisonment of either description which may extend to one year or with fine which may extend to five thousand rupees or with both.[xxvi]

In case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees. Section 5 provides that offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.[xxvii]

## Arunachal Pradesh

The Legislative Assembly of Arunachal Pradesh enacted Arunachal Pradesh Freedom of Religion Act in 1978 with eight sections to provide for prohibition of conversion from one religious faith to any other religious faith by use of force or inducement or by fraudulent means and for matters connected therewith. "Indigenous faith″ means such religious beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among the Monpas, Membas, Sherdukpens, Khambas, Khamptis and Singphos, Vaishnavism as practised by Noctes, Akas and Nature worships, including worships of Donyipolo, as prevalent among other indigenous communities of Arunachal Pradesh.[xxviii]

Force shall include show of force or a threat of injury any kind including threat of divine displeasure or social ex-communication. Fraud shall include the misrepresentation or any other fraudulent contrivance.[xxix]

Section 3 prohibits forcible conversion and provides punishment to the extent of two years and fine up to ten thousand rupees.[xxx] Section 5 provides that whoever converts any person from one religious faith to any other religious faith either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the Deputy Commissioner of the District to which the person converted belongs, of the fact of such conversion in such form as may be prescribed. In case a person fails, he

shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.[xxxi] No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the Deputy Commissioner or such other authority, not below the rank of an Extra Assistant Commissioner.[xxxii]

## Gujarat

Gujarat Freedom of Religion Act was enacted in Fifty-fourth Year of the Republic of India to provide for freedom of religion by prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for the matters incidental thereto. The Act has eight sections in all. Section 1 deals with short title and commencement**.** Allurement means offer of any temptation in the form of any gift or gratification, either in cash or kind and grant of any material benefit, either monetary or otherwise.

The definition of convert, force, minor and fraudulent means is identical to previous Acts. Section 3 strictly prohibits forcible conversion in the following words "No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by any fraudulent means nor shall any person abet such conversion." Whoever contravenes the provision of Section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also be liable to fine, which may extend to rupees fifty thousand. If the offence is in respect of a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe, punishment shall be imprisonment for a term which may extend to four years and also be liable to fine which may extend to rupees one lakh.[xxxiii]

Section 5 provides for taking prior permission from District Magistrate of conversion from one religion to another. The person who is converted shall send an intimation to the District Magistrate of the District concerned in which the ceremony has taken place of the fact of such conversion within such period and in such form as may be prescribed by rules. If any person fails to do as provided under Section 5, he shall be punished with imprisonment for a term, which may extend to one year or with fine which may extend to rupees one thousand or with both. No

prosecution for an offence under this Act shall be instituted 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 authorised by him in that behalf[xxxiv]. According to section 7, offence under this Act will be cognizable and shall not be investigated by an officer below the rank of a Police Inspector.

## Rajasthan

In order to curb illegal activities of conversion from one religion to another by allurement or by fraudulent means or forcibly which at times has caused annoyance in the community belonging to other religions and to maintain harmony amongst persons of various religions it had been considered expedient to enact a special law for the purpose of anti conversion. Rajasthan Freedom of Religion Bill was enacted by the Rajasthan State Legislature in the Fifty-seventh year of the Republic of India. The object of the Bill is similar to other state legislations. The Bill contains six sections in total. Section 1 deals with short title, extent and commencement. Section 2 defines unlawful, allurement, conversion, force and fraudulent. Section 3 provides that no person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by fraudulent means, nor shall any person abet any such conversion.

Whoever contravenes the provisions of Section 3 shall, without prejudice to any other civil or criminal liability, be punished with simple imprisonment for a term which shall not be less than two years but which may extend to fifty thousand rupees.[xxxv] According to Section 5, any offence under this Act shall be cognizable and non-bailable and shall not be investigated by an officer below the rank of Deputy Superintendent of Police.

## Judicial Approach Towards Anti Conversion Laws

There is a need for close study of impact of judicial decisions on freedom of religion and right to life. Numerous cases were filed against the validity of Anti conversion Laws of different states.

The constitutional validity of the Orissa Freedom of Religion Act 1967 was challenged before the High Court of Orissa in the case of **Mrs. Yulitha Hyde And Ors. vs State Of Orissa And Ors**[xxxvi] It was contended that the Act is ultra vires the Constitution as it infringes the

fundamental rights guaranteed under Articles 19(1)(a) and 25 of the Constitution and the State Legislature has no legislative competency to enact the statute in question It was contended that the word ‘force’ and ‘fraud’ had been used in Indian Penal Code for over a hundred years. Section 349 of the IPC defines 'force' while Section 25 defines 'fraudulently'. 'Inducement' has been referred to in several sections of IPC. It was argued that if the impugned Act intended to prohibit the use of 'force' or 'fraud' as methods of conversion, mere reference to the words should have been enough. The Court held that these words were well understood phrases but the definition of ‘inducement’ is vague.

With reference to infringement of Article 25(1) of the Constitution, the Division Bench negatived the petitioner’s contention and held that the definition of ‘inducement’ is capable of covering some of the methods of proselytizing and though the concept of inducement can be a matter referable to 'morality', the wide definition is indeed open to reasonable objection on the ground that it surpasses the field of morality.

Regarding the legislative competency of the Orissa State Legislature to enact the impugned Act, The Counsel for Government contended that the impugned Act is clearly referable to entry 1 of List II or Entry 1 of List III and as such the legislation is competent.

List II. Entry I, provides:--

"Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power)."

The Entry I of List III runs thus:

"Criminal law, including all matters Included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to 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."

On the other hand, the petitioners contended that there is no specific entry in Schedule VII of the Constitution dealing with the topic of 'religion' and. as such entry 97 of List I of Schedule VII alone must apply.

Entry 97 provides

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of these Lists."

The Court held that the State Legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry No. 1 of either Last II or List III does not authorise the impugned legislation. Accordingly, the Orissa Freedom of Religion Act was held unconstitutional.

**In Rev. Stainislaus vs State Of Madhya Pradesh & Ors**[xxxvii], the constitutional validity of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, was challenged in the High Court of Madhya Pradesh. The Court held-

> "What is penalised is conversion by force, fraud or by allurement. The other element is that. every person has a right to profess his own religion and to act according to it. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25(1) of the Constitution of India, as the Article g uarantees religious freedom subject to public health. As such, we do not find that the provisions of sections 3, 4 and 5 of the M.P. Dharma Swatantraya Adhiniyam, 1968 are violative of Article 25(1) of the Constitution of India. On the other hand, it guarantees that religious freedom to one and all includ- ing those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion, guarantees equality of religious freedom to all, much less can it be said to encroach upon the religious freedom of any particular individual."

Accordingly, the Madhya Pradesh High Court upheld the constitutional validity of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968.

Both the order of the Orissa High Court and Madhya Pradesh High Court were put in appeal to the apex court in **Rev. Stainislaus vs State Of Madhya Pradesh & Ors**[xxxviii] and these appeals were heard together because they raise common questions of law relating to the interpretation of the Constitution. It was contended by the appellant that the right to propogate one's religion means the right to convert a person to one's religion. In this regard, the court held 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."

As regards the question of legislative competence, the Court held that as the phrase 'public order' conveys a wider connotation and the subject matter of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 fails within the scope of Entry No. I of List II of the Seventh Schedule relating to the State List regarding public order.

The court observed-

> '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 dearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States. The expression "Public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in Ramesh Thapper v. The State of Madras[xxxix] 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.
>
> Reference may also be made to the decision in **Ramjilal Modi v. State of U.P.**[xl] where this Court has held that the right of freedom 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 predicted 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**[xli] 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 someone 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 I 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."

**In Lata Singh v State of U.P**[xlii],the Court held that-

"17 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 is not harassed by anyone nor subjected to threats or acts of violence, and anyone 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."

**In Salamat Ansari And 3 Others vs State Of U.P. And 3 Others**[xliii], the Court held gave equal importance to inter-religion marriage

> "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."

In a more recent decision of a three judge Bench in **Soni Gerry v Gerry Douglas**[xliv], the Court dealt with a case where the daughter of the appellant and respondent, who was a major had expressed a desire to reside in Kuwait, where she was pursuing her education, with her father. This Court observed thus:

> "9…She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.
>
> 10. 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."

A Constitution Bench of the Court, in **Common Cause (A Regd. Society) v Union of India**[xlv], held:

> "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 **Shafin Jahan v. Ashokan K.M.**[xlvi], the Court 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."

**In Smt. Noor jahan Begum @ Anjali Mishra &Anr. V. State of U.P. &Ors**[xlvii]**,** the Court held:

> "A conversion of religion by an individual to Islam can be said to be bonafide if he/she is major and of sound mind and embraces Islam by his/her own freewill and because of his/her faith and belief in the oneness of God (Allah) and prophetic character of Mahomed. 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 Mahomed to be his prophet, the conversion shall not be bonafide. In case of a religion conversion there should be a

> change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion."

In recently filed petition against 'Prohibition of Unlawful Religious Conversion Ordinance", 2020**, Neeraj Shukla Vs State Of Uttar Pradesh, Represented By Its Chief Secretary The Appropriate Authority**[xlviii], the petition states:

> "It has to be appreciated that the freedom of religion enshrined in the Article 25 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. The law "Prohibition of Unlawful Religious Conversion Ordinance", 2020, enacted by Uttar Pradesh Government, which are also threatening the rule of law and generally violate the fundamental rights of citizens. Moreover, these laws are acting as triggers for communal polarization of the society, imbalance the social and cultural harmony, and if not halted effectively and immediately will have disastrous consequences on the social fabric of the country"

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 serious encroachment into the right to freedom of choice of the two individuals. According to the petition filed, Uttar Pradesh State Government (Prohibition of Unlawful Religious Conversion Ordinance, 2020) has resulted in the violation of Article 14, 15, 21 and 25 of the Indian Constitution. The decision of the petition is still awaited. It would be interesting to see how the court will test the validity of UP Unlawful Religious Conversion Ordinance 2020 on the pillars of fundamental rights enshrined in the Constitution.

## Conclusion

The decision in **Rev. Stainislaus vs State of Madhya Pradesh & Ors**[xlix] has enunciated the following principles:

1. Right to propagate religion under Article 25 does not include 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.
2. 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.
3. The Anti- Conversion Acts fall within the purview of Entry I 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.
4. There is no justification for the argument that anti-conversion laws fall under Entry 97 of List I of the Seventh Schedule.

The principle right to freedom of religion is in consonance with Article 18 of UDHR and Article 18 of ICCPR. Article 18 of ICCPR states that everyone shall have 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. Clause 2 of Article 18 of ICCPR states that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. This clause expressly prohibits forceful conversion of religion.

Voluntary conversion from one religion to another is recognized in right to freedom of religion and freedom of conscience. Religion is a very delicate subject in India. If unlawful conversion of persons from one religion to another religion is allowed, it would in all probability leads to breach of peace, and thus affect public order in the State. Therefore, the enactment of State Acts to curb unlawful conversion is in the spirit of the Constitution and absolutely valid under Entry I of List II of the Seventh Schedule.

However, after analyzing the provisions of different state laws regulating religion conversion, the following points can be summarized:

1. The punishments for unlawful conversion from one religion to another religion in different state Acts are not uniform.
2. The definition of 'inducement/allurement' is quite vague and wide and can infringe Article 26 of the Indian Constitution.
3. The different classification of conversion/reconversion and religion/indigenous religions, etc does not appear to be warranted and in conflict with Article 14 of the Constitution.
4. Parliament is competent to enact a law to regulate the conversion of religion under Article 248 and 253.. Reference can be made to **Sarla Mudgal vs Union of India**[1], where appointing a Committee to enact Conversion of Religion Act, immediately, to check the abuse of religion by any person was recommended by the Supreme Court.
5. Conversion of a religion should be bona fide and not 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 that religion.

[i] https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2025 accessed on 6th April, 2021.
[ii] Article 25,Constitution of India
[iii] (1994)3 SCC.
[iv] https://en.wikipedia.org/wiki/Love_Jihad accessed on 6th April 2021.
[v] Section 2(e), The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.
[vi] Section2(f). The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.
[vii] Section2(h). The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020
[viii] Section 6. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.
[ix] Section 8, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.
[x] Section 9, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020.
[xi] https://timesofindia.indiatimes.com/city/shimla/new-freedom-of-religion-act-comes-into-force-in-himachal-pradesh/articleshow/79821394.cms accessed on 31st march 2020 at 11:03 A.M.
[xii] Section 2(a),The Himachal Pradesh Freedom of Religion Act, 2019.
[xiii] Section 2(j), The Himachal Pradesh Freedom of Religion Act, 2019.
[xiv] Section 3. The Himachal Pradesh Freedom of Religion Act, 2019.
[xv] Section 4. The Himachal Pradesh Freedom of Religion Act, 2019.
[xvi] Section 12. The Himachal Pradesh Freedom of Religion Act, 2019.
[xvii] Section 7. The Himachal Pradesh Freedom of Religion Act, 2019.
[xviii] Section 8. The Himachal Pradesh Freedom of Religion Act, 2019.
[xix] Section 10. The Himachal Pradesh Freedom of Religion Act, 2019.
[xx] Section 3, the Madhya Pradesh Freedom of Religion Ordinance 2020.
[xxi] Section 8. the Madhya Pradesh Freedom of Religion Ordinance 2020.
[xxii] Section 4, Chhattisgarh Dharma Swantantraya Adhiniyam [Freedom of Religion] Act, 1968.
[xxiii] Section5, Chhattisgarh Dharma Swantantraya Adhiniyam [Freedom of Religion] Act, 1968.
[xxiv] Section (6), Chhattisgarh Dharma Swantantraya Adhiniyam [Freedom of Religion] Act, 1968.
[xxv] HABC No.20 of 2017.
[xxvi] Section 4, Orissa Freedom of Religion Act, 1967.
[xxvii] Section 6. Orissa Freedom of Religion Act, 1967.
[xxviii] Section 2(1)(c), Arunachal Pradesh Freedom of Religion Act, 1978.
[xxix] Section 2(1)(e), Arunachal Pradesh Freedom of Religion Act, 1978.
[xxx] Section 4. Arunachal Pradesh Freedom of Religion Act, 1978.
[xxxi] Section 6. Arunachal Pradesh Freedom of Religion Act, 1978.
[xxxii] Section 7. Arunachal Pradesh Freedom of Religion Act, 1978.
[xxxiii] Section 4, Gujarat Freedom of Religion Act, 2003.
[xxxiv] Section 6. Gujarat Freedom of Religion Act, 2003.
[xxxv] Section 4, Rajasthan Freedom of Religion Bill.
[xxxvi] AIR 1973 Ori 116.
[xxxvii] AIR 1975 MP 163.
[xxxviii] AIR 1977 SC 908.
[xxxix] (1950) S.C.R. 594.
[xl] (1957) S.C.R. 860.
[xli] AIR 1970 SC 1228.
[xlii] (2006) 5 SCC 475.
[xliii] CRIMINAL MISC. WRIT PETITION No. - 11367 of 2020.
[xliv] (2018) 2 SCC 197.
[xlv] Writ Petition(Civil) No. 215 of 2005.
[xlvi] Crl.A 366/2018 (arising out of SLP (Crl.) 5777/2017).
[xlvii] WRIT - C No. - 57068 of 2014.
[xlviii] Civil Writ petition of 2020.
[xlix] Supra note xlvi.

[1] AIR 1995 SC 1531.