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Forceful Conversion: A Legal Analysis

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ABSTRACT

Living in a religiously diverse society, such as India, can be challenging. While it is important to maintain the individuality of these diverse groups, it is also imperative to ensure that such groups are able to provide for as well as protect the individual rights of every member within the said group. This paper is written to address the well-known phenomenon called Forceful Conversion, while keeping in mind the various aspects related to it.

In order to ensure acceptance and administration of rights of individuals, various efforts have been taken to recognize as well as introduce international and national legal frameworks, within the Indian Legal System. It is noted that 'Society', as a whole, can be considered as a living organism that is constantly changing. Due to this ever-changing nature of the Society, the Nation requires a flexible yet well thought of legal system that ensures that such societal changes are kept abreast with. It is duly stated that this paper has been written while keeping in the sensitivity surrounding the aspect of religion.

The research paper aims to look into the history of Anti-Conversion Laws in India. It is intended to center around the study of the recently passed Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance ('the Ordinance') of 2020. It identifies various provisions pertaining to the freedom of religion, thought and conscience as provided for within the scope of International Law. The frameworks being referred to here are the UDHR, ICCPR and the General Comments related to the ICCPR. These provisions are thereafter studied to identify its influence on the Indian Anti-Conversion Laws. Additionally, this paper offers the Author's unbiased observation and comments regarding the new Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020.

“All religions, arts and science are branches of the same tree. All these aspirations are directed towards ennobling man's life, lifting it from the sphere of mere physical existence and leading the individual towards freedom.”

- Albert Einstein

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I. INTRODUCTION

India is known as an epicenter and symbol for the birth and sustenance of various religious and cultural diversities.² It is an ancient land that is considered as the originator and nurturer of various forms of music, dance, art, religion, ritual and beliefs.³ People practicing Hinduism, Buddhism, Sikhism, Jainism, Christianity, Judaism, Islam and Zoroastrianism all call India their home.⁴

Religious beliefs have developed around profound understanding, teaching and reasoning that has matured over time. To maintain its relevance in present and changing times, various recognized principles such as *liberty*, *equality* and *fraternity* have been incorporated into religious practices and teachings.⁵ These principles have helped to make religious provisions applicable to a broader spectrum of people living in different circumstances. The existence of religious beliefs is seen all over the world. It is a structure to support a value system that connects humanity to spirituality.⁶

However, while numerous religions are practiced by different groups of people inhabiting the same region of the world, it is a well-known fact that since time immemorial, differences in religious beliefs, practices and rituals have led to communal conflicts amongst groups of individuals living in the same region. It is argued that, while on the one hand, clashes due to differences in economic and political outlook may be resolved by means of compromise, conflicts arising out of differences in religious outlook, on the other hand, cannot be resolved by mere compromise due to vast differences in core beliefs and understanding, which cannot be bridges effectively through compromise.⁷

Newer religions have grown by conversion of people following other faiths into them. Since conversion involves a complete change in religious and social identity, it has been a bone of contention amongst various religious groups.⁸ It may be voluntary, enticed by giving financial

² Prof. Dr. Fauzan Naif, *The Meeting of Religion In India (Literature Analyzing on Eastern Religion and Western Thought and Fi al- 'Aqâid wa al-Adyân)*, (2018) (10 Dec. 2020), https://www.researchgate.net/publication/326648117_The_Meeting_of_Religions_in_India_Literature_Analyzing_on_Eastern_Religion_And_Western_Thought_and_Fi_al-'Aqaid_wa_al-Adyan.

³ *Id.*

⁴ NAIF, *supra* note 3.

⁵ NAIF, *supra* note 3.

⁶ Council of Europe, *'Religion and Belief' in Compass: Manual for Human Rights Education with Young People* (2012), (10 Dec. 2020), <https://www.coe.int/en/web/compass/religion-and-belief#1>.

⁷ J.G Montalvo & M. Reynal-Querol, *Why ethnic fictionalization? Polarization, ethnic conflict and growth* (2002), (06 Jan. 2021), <https://econ-papers.upf.edu/papers/660.pdf>.

⁸ Widely referred to as *Love Jihad*. See Charu Gupta, *Hindu Women, Muslim Men: Love Jihad and Conversions*, 44(51) Economic and Political Weekly, 13-15 (2009), (06 Jan. 2021), https://www.researchgate.net/publication/260468360_Hindu_Women_Muslim_Men_Love_Jihad_and_Conversions.

incentives or forcible. The phenomenon of forceful conversion in order to sanctify a marriage or create social consolidation traces its roots to the early 1920's. It still continues to be a matter of social concern in India.⁹ Various legislative works have been put in place to ensure that forceful conversions do not take place.¹⁰

This paper will be looking into the history of Anti-Conversion Laws, along with the recently passed Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance ('the Ordinance') of 2020. It will examine the importance of International Law and its influence on Indian Anti-Conversion Laws. Additionally, this paper will state the Author's views regarding the new Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020.

II. WHAT IS FORCEFUL CONVERSION?

While conversion from one religion to another may take place under various circumstances, it has also been associated with act of conversion of a potential spouse to ensure validity of an inter-religious marriage.¹¹ This form of conversion has, on various occasions, been referred to as *love jihad*, where a deliberate effort is made to spread a religion, by coercive conversion of a prospective spouse, usually a girl by a boy with whom she has a romantic relationship.¹²

The word *Jihad* is an Arabic word which has been interpreted differently in various contexts. In common parlance, the word jihad involves reference to any form of physical or mental effort, exertion, conflict or war. It is derived from '*j-h-d*' which means to strive or exert one's utmost power or efforts and ability to fight against an unfavourable situation.¹³ Another word, '*Ijtihad*' is used to describe the effort made by an individual to achieve a laborious goal.¹⁴ Both the

⁹ In reference to forceful conversion of Hindu women into Islam, in order to marry a Muslim man. *See Id.*

¹⁰Forceful conversion into another religion can take place by Coercion, monetary inducement and material inducement. *See* CIEoRB, *The Archbishop of Canterbury convenes forum on freedom of religion or belief in the Commonwealth*, (University of Birmingham, 30 Apr. 2018) (06 Jan. 2021), <https://www.birmingham.ac.uk/schools/ptr/departments/theologyandreligion/news/2018/ciforb-archbishop-forum.aspx>.

¹¹It is argued that there is a strong connection between religion, State and society. On various observed occasions, various States (Nations) in lieu of maintaining their religious identity, put forth legal frameworks to ensure selective yet elaborate parameters for conversion. For example, Malaysia has put forth various legal provisions to ensure that conversion is allowed for specific individuals, so as to maintain the purity of the religious group. *See* SARAN KAUR, *LANGUAGE POLICY CHALLENGES IN MULTI- ETHNIC MALAYSIA* (Springer eds, 2014).

¹²For Instance, in *Shahan Sha v. State of Kerala* (2009) B.A. No. 5288/ 2009 and *Shafin Jahan v. Asokan K.M. and other* (2018) CrI.A 366/2018, the Hon'ble Courts of India have addressed this issue by terming it as Love Jihad or Romeo Jihad, unless referring to a specific organisation named Romeo Jihad. *See* *Shahan Sha v. State of Kerala* (2009) B.A. No. 5288/ 2009 (High Court of Kerala) ¶ 17, 19. For reference *See* (14 Jan. 2021) <https://caselaw.in/kerala/shahan-sha-a-v-state-of-kerala-b-a-no-5288-of-2009-ker/5991/>. Also *See* *Shafin Jahan v. Asokan K.M. and other* (2018) CrI.A 366/2018 (arising out of SLP (CrI.) 5777/2017) (Supreme Court of India) ¶ 21 (14 Jan. 2021), https://main.sci.gov.in/supremecourt/2017/19702/19702_2017_Judgement_08-Mar-2018.pdf

¹³ The meaning and the origin of the word as spoken about by Ibn Manzur in 1955, Al Tahanawi in 1998, M'aluf in 1884 and under various Islamic texts. *See* Hayati Aydin, *Jihad in Islam*, 2(2) Global J. Al-Thagafah, 7-15, (2012), (09 Jan. 2021), https://www.researchgate.net/publication/293023300_Jihad_in_Islam.

¹⁴ The word has been widely been referred to by Firuzabadi in 1977. *See Id.*

words are used to refer to one's extreme efforts to strive and succeed in achieving a religious purpose.

While mass conversions are known to cause social tension between religious groups, the concept of Love-Jihad or forceful conversion under the pretext of marriage has been a very emotive and sensitive issue in India. The phrase '*Love-Jihad*' has been coined by the print and electronic media who have linked isolated conversions to create a general impression that certain alleged 'religious extremists' have apparently planned and supported 'campaigns' to convert women from one faith to another by coercion, before permitting the couple to perform any marriage rituals.¹⁵ Additionally, various Courts in India have referred to this form of forceful conversion as Love Jihad. For instance, the Supreme Court of India, in the case of *Jahan v. Asokan K.M.*, referred to the circumstances of a Muslim man coercing a Hindu woman to convert in order to marry, as Love Jihad.¹⁶ Similarly, High Courts of India, for cases of similar nature, have called these phenomena as Love Jihad.¹⁷

III. THE NEED TO UNDERSTAND INTERNATIONAL AND INDIAN LEGAL FRAMEWORK

Usually there is noticeable interaction between International law and any form of corresponding Domestic law. It is important to understand the relationship between the two independent legal systems to understand the influence that one system has on the other. Influence of international law can be seen in various legal provisions of corresponding Indian legislation. There are two means by which international legal frameworks can be incorporated into a domestic legislative system. They are Monism and Dualism.

Monism is the form of domestic legal system, whereby the constitution of the State permits the incorporation of international law directly, post ratification. This form of incorporation does not require a change in the national legal framework. Additionally, this system can be put in place by executing a self-executing treaty.¹⁸

Dualism, on the other hand, is a form of domestic legal system, wherein the constitution directs

¹⁵ The High Court of Kerala recognised that various Muslim Men lead groups are responsible for forceful conversion of Hindu women. This form of movement has been referred to as the Love Jihad Movement. See *Shahan Sha v. State of Kerala* (2009) B.A. No. 5288/ 2009 (High Court of Kerala) ¶ 17, 19. For reference See (14 Jan. 2021), <https://caselaw.in/kerala/shahan-sha-a-v-state-of-kerala-b-a-no-5288-of-2009-ker/5991/>. Also See CIEoRB, *supra* note 11.

¹⁶ In this case, the Supreme Court annulled the marriage of 26-year-old women, who had converted to Islam in order to marry. See *Shafin Jahan v. Asokan K.M. and other* (2018) CrI.A 366/2018 (arising out of SLP (CrI.) 5777/2017) (Supreme Court of India) ¶ 21, (14 Jan. 2021), https://main.sci.gov.in/supremecourt/2017/19702/19702_2017_Judgement_08-Mar-2018.pdf.

¹⁷ See *Shahan Sha v. State of Kerala* [2009] B.A. No. 5288/ 2009 (High Court of Kerala) ¶ 17, 19. For reference See (14 Jan. 2021), <https://caselaw.in/kerala/shahan-sha-a-v-state-of-kerala-b-a-no-5288-of-2009-ker/5991/>.

¹⁸ HANS KELSEN, 'Sovereignty' in Vol 1. INTERNATIONAL LAW, 3 (Malcolm Evens and Patrick Capps(eds), Ashgate Publishing, Farnham, 2009).

the State to pass domestic legislature which incorporates the corresponding international legal framework officially. Such a legal framework maybe put in place in a manner that suits the situation of the State, while keeping in mind the reservations or modifications made by the State during ratification of the international framework.¹⁹ India follows this form of incorporation of international legislation.²⁰

The following section will elaborate on the different international and national provisions that have been put in place to recognise the freedom of religion, thought and conscience.

IV. INTERNATIONAL LAW

International law lays down various legal frameworks in form of Conventions, Declarations and Resolutions to recognise and protect Human Rights.²¹ The field of International Human Rights identifies the freedom of religion, thought and conscience as an important human right.²² The following are a few international legal provisions which have been legislated by international actors and organisations.²³ Such provisions have been fairly expansive while recognizing and describing human rights and freedoms.

The *Universal Declaration of Human Rights* ('UDHR'), also known as the 'Magna Carta' of human rights, has recognised various rights such as the freedom of thought, conscience and religious belief, among universal human rights.²⁴ This includes an individual's right to conversion. This means that an individual may, on his/her free will, change or convert his or her faith or religion at any point in time.²⁵

Under the *International Covenant on Civil and Political Right* ('ICCPR'), Article 18 recognises that an individual shall not be subjected to any form of coercion that will result in impairing

¹⁹ Armin von Bogdandy, *Pluralism, direct effect, and the ultimate say: On the relationship between international and domestic constitutional law*, 6(3-4) Int'l J. of Constitutional L., 397-413 (2008), (14 Jan. 2021), <https://academic.oup.com/icon/article/6/3-4/397/654420>.

²⁰ Aparna Chandra, *India and International Law: Formal Dualism, Functional Monism*, Indian J. of Int'l L. (2017), (14 Jan. 2021), https://library.unej.ac.id/repository/_Indian_Journal_of_International_Law0A.pdf.

²¹ United Nations, 'International Law and Justice', (14 Jan. 2021), <https://www.un.org/en/sections/issues-depth/international-law-and-justice/>

²² International Human rights addresses various aspects that impact human beings. Religious rights have been dealt with under various international frameworks such as the UDHR, ICCPR etc. See Universal Declaration of Human Rights ('UDHR') 1948. Also See International Covenant on Civil and Political Rights ('ICCPR') 1966.

²³ International actors include the various State parties along with international organisations such as the United Nations and its various organs such as the United Nations General Assembly, the United Nations Security Council etc. See United Nations, 'Main Organ', (15 Jan. 2021), <https://www.un.org/en/sections/about-un/main-organs/index.html>.

²⁴ Zelalem Kibret, 'The Magna Carta for all Humanity' and 'African values': an Appraisal' (2019) Center for Human Rights & Legal Pluralism, (10 Jan. 2021), <https://www.mcgill.ca/humanrights/article/70th-anniversary-universal-declaration-human-rights/magna-carta-all-humanity-and-african-values-appraisal>. Also See Universal Declaration of Human Rights ('UDHR') 1948, <https://www.un.org/en/universal-declaration-human-rights/>.

²⁵ See Universal Declaration of Human Rights ('UDHR') 1948, art. 18.

his/her freedom to have or adopt a form of religion or belief of choice.²⁶ This right is recognised as a non-derogable right. This form of right cannot be restricted or diverted from under any given circumstances.²⁷

In addition, *General Comment No. 22*, that discusses Article 18 of the ICCPR, recognises the right of an individual to change his/ her religion. Furthermore, it prohibits use of any form of coercion, such as use of threat of physical force or penal sanctions that impairs this right. Coercion to make an individual participate in any form of ritual, belief or congregation for which he/ she is comfortable, is prohibited under this provision. Lastly, this provision puts a ban on implementing any form of restriction placed over education, medical care, employment or any other human rights in lieu of forceful conversion.²⁸

The ICCPR levies an obligation on all State Parties to ensure that the rights administered under this Convention are respected and not violated. Any form of disagreement or violation of rights by a State, it's agent or any private individual results in impairing the enjoyment of the right and therefore, not permitted.²⁹ It should be noted that any form of coercion, monetary inducement or material inducement in order to achieve a questionable objective is not permitted under international law.³⁰

V. INDIAN LAWS

In order to fully understand the evolution and reasoning for the present legislation in India regarding Anti-Conversion Laws, it is important to look back at historic events leading to the present times. Between the 1920's and 1940's, it became apparent that the religious identity of Hindu Princely States had to be protected from the emerging British Missionaries.³¹ Therefore, these States enacted various provisions in an attempt to protect themselves from the Christian Missionary influencers.³²

²⁶ International Covenant on Civil and Political Rights ('ICCPR') 1966, art. 18(1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²⁷ International Covenant on Civil and Political Rights ('ICCPR') 1966, art. 4(2).

²⁸ UNHRC, 'CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993) CCPR/C/21/Rev.1/Add.4, <https://www.refworld.org/docid/453883fb22.html>.

²⁹ International Covenant on Civil and Political Rights ('ICCPR') 1966, art. 2(1).

³⁰ See CIEoRB, *supra* note 11.

³¹ Princely States included states such as Kota, Kalahandi, Raigarh, Patna, Bikaner, Jodhpur, etc. *Raigarh State Conversion Act of 1936, the Udaipur State Anti-Conversion Act of 1946* are a few examples of the legislation passed to protect the Hindu identity of the Princely States. See Jennifer Coleman, *Authoring (In) Authenticity, Regulating Religious Tolerance: The Legal and Political Implications of Anti-Conversion Legislation for Indian Secularism*, (2007), for THE PENN PROGRAM IN DEMOCRACY, CITIZENSHIP AND CONSTITUTIONALISM, (11 Jan. 2021), <https://perma.cc/9WY3-DTFN>. 2021. Also See the Library of Congress, *State Anti-Conversion Laws in India*, (11 Jan. 2021), <<https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

³² James Hudd, *Religious Freedom in India and Analysis of the constitutionality of Anti-Conversion Laws*, 10(2) *Rutger J. L. & Religion* 1, 4 (2009), (11 Jan. 2021), <https://perma.cc/7Z7Y-9U8Q>.

While these laws helped protect the demographic profile of Hindu Princely States during this period, the same cannot be said for the nation in the post-independence period. Though various Anti-Conversion Bills were introduced in the Indian Parliament, none of them were enacted. The bills were not passed due to lack of parliamentary support.³³ On various occasions, political support for such Anti-Conversion Laws was regarded as a non-secular move that violated the principle of Secularism as stated under the Indian Constitution.³⁴ At State level, however, legislations have been enacted to ensure and regulate religious conversions that are carried out. For instance, at present the states of Odisha³⁵, Madhya Pradesh³⁶, Arunachal Pradesh³⁷, Chhattisgarh³⁸, Gujarat³⁹, Himachal Pradesh⁴⁰, Rajasthan⁴¹, Uttarakhand⁴² and lastly, Uttar Pradesh⁴³ have various enacted anti-conversion provisions, in form of legislations and ordinances. This legal framework recognises various circumstances under which forceful conversions may take place. Furthermore, they put forth punishments for individuals who are responsible for forcefully converting individuals into another religious faith by coercion, or force or inducement.⁴⁴

Numerous differences can be observed in the legal provisions undertaken by various States of India. For instance, under the Madhya Pradesh Act, inducement has been referred to as allurement.⁴⁵ The punishment for the same is a fine for up to ten thousand rupees, along with imprisonment up to two years.⁴⁶ The Act states that this legislation establishes the equality of

³³ Parliamentary Bills such as the *Indian Conversion (Regulation and Registration) Bill*, 1954, the *Backward Communities (Religious Protection) Bill* of 1969 and the *Freedom of Religion Bill* of 1979 were all introduced yet failed to gain parliamentary majority. See Iqtidar Cheema, *Constitutional and Legal Challenges Faced by Religious Minorities in India* (2017) for U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF), (11 Jan. 2021), <https://perma.cc/KQ7P-DY7R>. Also See the Library of Congress, *State Anti-Conversion Laws in India*, (11 Jan. 2021), <https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

³⁴ Saurav Dutta, *India's Mass Conversion Problem*, (4 Jan. 2015), (11 Jan. 2021), <https://perma.cc/4UFD-KQZ8>.

³⁵ The Orissa Freedom of Religion Act, 1967 was put in place to recognise, under Section 3, the concept of forceful conversion, “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 inducement or by inducement or by any fraudulent means nor shall any person abet any such conversion.” Any act of forcible conversion is punishable with imprisonment of up to one year and a fine up to 5,000 rupees. See the Orissa Freedom of Religion Act, 1967, (16 Jan. 2021), <https://perma.cc/EAZ9-FC8A>.

³⁶ See Madhya Pradesh Freedom of Religion Act, 1968 (16 Jan. 2021), <https://perma.cc/7H96-2Y5A>.

³⁷ See Arunachal Pradesh Freedom of Religion Act, 1978, (16 Jan. 2021), <https://perma.cc/9THA-9M2C>.

³⁸ See *Chhattisgarh Passes Anti-conversion Bill*, *Gulf News* (Aug. 4, 2006) (16 Jan. 2021), <https://perma.cc/9RK6-6XZ4>.

³⁹ See Gujarat Freedom of Religion Act, 2003, (16 Jan. 2021), <https://perma.cc/7VBX-BGTP>.

⁴⁰ See Himachal Pradesh Freedom of Religion Bill, No. 31 of 2006, (16 Jan. 2021), <https://perma.cc/34KX-64D8>.

⁴¹ See Rajasthan Freedom of Religion Bill, No. 12 of 2006 <<https://perma.cc/FPY9-ZDS2>> accessed 16 Jan. 2021.

⁴² See the Uttarakhand Freedom of Religion Act, 2018, (16 Jan. 2021), https://prsindia.org/files/bills_acts/acts_states/uttarakhand/2018/Act%2028%20of%202018%20UKD.pdf.

⁴³ See the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (16 Jan. 2021), https://www.sconline.com/blog/wp-content/uploads/2020/12/UP_Prohibition_of_Unlawful_Conversion_of_Religion_Ordinance_2020.pdf.

⁴⁴ *Supra* notes 37-43.

⁴⁵ Madhya Pradesh Freedom of Religion Act, 1968, § 3.

⁴⁶ Madhya Pradesh Freedom of Religion Act, 1968, § 4.

religious freedom amongst all citizens while prohibiting any form of conversion undertaken by objectionable activities such as coercion, force, fraud and allurement.⁴⁷

Under the Uttarakhand' Freedom to Religion Act, an act of forced conversion can lead to imprisonment for one to five years along with fine.⁴⁸ Forced conversion can be a result of coercion, undue influence or allurement.⁴⁹ A unique provision of this Act is stated under Section 3, which stipulated an exception from punishment for individuals who decide to returning back/ re-convert into their ancestral religion.⁵⁰

Additionally, under the Anti-Conversion Law of Gujrat, the imprisonment for forceful conversion is up to three years along with a fine of up to fifty thousand rupees. However, under this act, the definition of the word 'convert' is slightly different. It states that 'converting' is the act by which an individual is made to renounce one's religion and adopt another religion.⁵¹

It can be noted that, the basis of each legislation passes by various States of India are the same. However, definition, scope of application and punishments have been different for each States. The following section will elaborate on the application of international law along with the understanding of the new Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance of 2020.

VI. COMMENTS AND FINDINGS

There are numerous legal provisions that recognise the existence of a right to freedom of thought, conscience, religion and religious beliefs, however, certain practical problems do arisen due to lacunas in the letter of the law.⁵² The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance ('the Ordinance') of 2020, has been legislated with the intension of "...providing 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...".⁵³ This Ordinance is put in place to help provide for prohibition of the unlawful conversion of an individual. *Prima Facie*, the Ordinance appears to undertaken all state obligations imposed upon a state under various legal provisions of international law and the Indian Constitution. However, a deeper understanding of this Ordinance reveals the

⁴⁷ Rev. Stainslaus v. State of Madhya Pradesh and Others, [1977] A.I.R. 908 (High Court of Madhya Pradesh), (18 Jan. 2021), <https://www.casemine.com/judgement/in/56097845e4b014971133a25d>.

⁴⁸ The Uttarakhand Freedom of Religion Act, 2018, § 3.

⁴⁹ The Uttarakhand Freedom of Religion Act, 2018, § 8(1).

⁵⁰ The Uttarakhand Freedom of Religion Act, 2018, § 3.

⁵¹ Gujarat Freedom of Religion Act, 2003, § 2(b).

⁵² Such as the provisions presented under UDHR, ICCPR and various Indian Laws.

⁵³ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Preamble.

contradictory.

The Ordinance has imposed restrictions on individuals who intend to convert their religion. Section 6 of the Ordinance, clearly addresses the issue of marriages being undertaken with the sole purpose of unlawful conversion.⁵⁴ Section 8 and 9 of the Ordinance, on the other hand refer to various means by which an individual is under obligation to declare his/her intention of conversion. Such an individual is required to fill up a declaration 60 days prior to conversion or within 60 days of conversion.⁵⁵ Police forces are to investigate the circumstances under which such a conversion is to taking place to ensure that the conversion is out of free will.⁵⁶ Similarly, in the case of conversion that has already taken place, a declaration is put up for collecting public objections.⁵⁷ Both the procedures are to be undertaken under the watchful eyes of the District Magistrate.⁵⁸

It is emphasised that the Ordinance was put forth with the intension of addressing the practice of unlawful conversion. However, it is argued that the Ordinance not only fails to undertake its state obligations as provided for under the International law, it fails to make a conducive environment for individuals to practice their constitutional rights.⁵⁹

The provisions of ICCPR, can be therefore divided into three aspects. Firstly, under its provisions, the ICCPR provides for the right to freedom of religion, thought and beliefs.⁶⁰ Secondly, it recognises the right to conversion, as mentioned under General Comment No. 22.⁶¹ Lastly, ICCPR places the burden of proof on the State in case an anti-conversion laws are legislated.⁶² It is noted that no prohibition can be placed on any attempt being made to convert an individual, so long as the method of influence is not coercive in nature. It can be stated that State may place a restriction on forms of conversion provided it is able to prove that the restriction falls within the purview of Article 18(3) of the ICCPR.⁶³ Article 18(3) of the ICCPR

⁵⁴ An unlawful marriage undertaken under the sole purpose of conversion, will be termed as *void* if proven in the Courts of Law. See the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 6.

⁵⁵ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 8, 9.

⁵⁶ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 8(3).

⁵⁷ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 9(5).

⁵⁸ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 8,9.

⁵⁹ The Ordinance has failed to address the need for upholding the right to freedom of religion, thought and belief along with the fundamental rights to religion and right to privacy. See UDHR. Also See ICCPR. Also See the INDIA CONST., (16 Jan. 2021), https://www.india.gov.in/sites/upload_files/npf/files/coi_part_full.pdf.

⁶⁰ “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”. See ICCPR, art. 18(1).

⁶¹ UNHRC, ‘CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) CCPR/C/21/Rev.1/Add.4 <<https://www.refworld.org/docid/453883fb22.html>>.

⁶² ICCPR, art. 3, art. 18(3).

⁶³ Heiner Bielefeldt, *Freedom of Religion or Belief- A Human Right under Pressure*, 1(1) Oxford J. of L. and Religion, 15-35 (2012), (16 Jan. 2021), <https://academic.oup.com/ojlr/article-abstract/1/1/15/1547673?redirected>

states “ *Freedom to manifest one's religion or beliefs may be 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*”.⁶⁴ Under the provisions of the Constitution of India, the fundamental right to freedom of religion along with the right to privacy, are the focal point of considered for ascertaining the position of this very Ordinance.⁶⁵

Noting that the international law provisions and the Indian law provisions have common basis and coexistence. For argument's sake, the provisions of international law will be considered while addressing the issues of State obligation, while the provisions of the Constitution of India shall be used to argue the aspect of individual rights of freedom to religion along with the right to privacy.

It is stated that the Ordinance has failed to provide for the practice of right to religion as stated under the provisions of Article 18 of the ICCPR. The ICCPR recognises the aspect of practicing religion and belief of an individual, as per his/her understanding and comfort. However, the Ordinance, as stated earlier, requires the individual to put forth a declaration, pre-conversion or post-conversion, thereby requesting the participation of the judicial system along with the public. The involvement of the judicial system along with the public hamper the individual's rights to practice his/her religion without public and judicial scrutiny.

In furtherance to this, the Ordinance, while addressing the concept of conversion as permitted under Article 18 of ICCPR, fails to provide a conducive environment which helps an individual to practice his/her chosen religion.⁶⁶ The involvement of the judicial system along with the aspect of public objection to one's conversion causes a situation of discomfort for many. The mere idea of practicing one's religion of choice is hampered by involvement of external factors.

Additionally, it is argued that the State is under the burden to prove that such an Anti-Conversion legal provision falls within the purview of Article 18(3) of the ICCPR, which it fails to do.⁶⁷ As stated earlier, any State, under International Law, has the obligation to ensure protection of its citizens from individuals or organisations that resort to use of any form of force to convert individuals into another religion. The protection should be against any form of

From=fulltext. Also See CIEoRB, *supra* note 11.

⁶⁴ ICCPR, art. 18(3).

⁶⁵ Article 25 of the Constitution of India refers to the freedom to religion, whereas the right to privacy, is an extension of Article 21 of the Indian Constitution. See INDIA CONST., (16 Jan. 2021), https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.

⁶⁶ UNHRC, ‘CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) CCPR/C/21/Rev.1/Add.4, <https://www.refworld.org/docid/453883fb22.html>.

⁶⁷ BIELEFELDT, *supra* note 64.

coercion or direct exploitation resulting in a forced change of religion.⁶⁸ Vulnerable groups of people, such as women, minors, patients in hospital, victims of humanitarian emergencies and other captive individuals such as institutional inmates or individuals under higher command such as defence personnel, should be provided protection against conversion.⁶⁹

It is evident that while the State has the ultimate power to protect individuals from forced conversion, any law enacted to restrict the attempt to convert will be *ultra vires* to International Law, if not adhering to provisions of ICCPR. The Ordinance fails to provide protection on grounds of public safety and protection of fundamental rights of an individual.⁷⁰ This aspect shall be elaborated in the next section, which explains the failure to adhere to the requirement placed under the provisions of the Constitution of India.

The Constitution of India bestows upon its citizens the right to privacy and the right to freedom of religion.⁷¹ However, a through read of the Ordinance, showcases practical lacunas that come into picture due to the provisions of the Ordinance. With regards to the restriction placed under article 18(3) of the ICCPR, the said anti-conversion law provision should be enacted in order to protect the fundamental rights of an individual.⁷² However, the fundamental rights of the citizens are being hampered by the involvement of the Court and Public at large. The final says of the District Magistrate, on any request of conversion, is not permitting an individual practice his/her religious freedom. Additionally, the declaration, which is put out for public objection is not permitting the individual to undertake and practice his/her religion in the sanctity of his/her privacy.

Furthermore, it is argued that the Ordinance is unable to provide for public safety, as stated under Article 18(3) of the ICCPR. India being a country with vast religious diversities, requires provisions being placed for protecting such religiously diverse individuals and groups. It is argued that while the Ordinance was place to provide protection to individuals and avoid communal tensions, it may in fact be giving rise to such communal tension. Public notice of conversion may in itself spark underlying tension amongst the religious communities. The Ordinance is put in place to negate communal tensions; however, it is argued that public safety is not being taken care of by this Ordinance, due to the factors stated above. Thereby the Ordinance has failing to adhere to the obligations placed under the Article 18(3) of the ICCPR

⁶⁸ BIELEFELDT, *supra* note 64.

⁶⁹ BIELEFELDT, *supra* note 64.

⁷⁰ The right to privacy is an extension of Article 21 of the Indian Constitution. See the INDIA CONST. (16 Jan. 2021), https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.

⁷¹ INDIA CONST. art. 21 and art. 25.

⁷² ICCPR, art. 18(3).

and the Constitution of India *in toto*.

VII. CONCLUSION

To conclude, one must remember that, in cases of disputed conversion from one religion to another, the following few questions need to be answered to establish whether or not the conversion was a result of coercion or any form of manipulation. Firstly, whether or not the conversion was carried out in exercise of the right to religious freedom, given to the individual. Secondly, whether or not the conversion was in exercise of free will, or was performed under any form of coercion or threat. Thirdly, whether or not such a conversion was the result of non-coercive persuasion. Fourthly, what are the rights that are entitled to a child and his/her parents in case of conversion.⁷³

It is important to change legislation with changing time and circumstances. While the States have the obligation to provide protection to individuals from exploitation, it is very difficult to address legal issues that have religious importance. However, when conversion is undertaken as a result of manipulation and inducement, it can result in forceful conversion. Therefore, having an all-inclusive legislation for protecting individuals is important. It might be difficult to devise a single all-inclusive legislation that ensures simultaneous application of domestic and international legal provisions.

A free or voluntary conversion, where a person willingly embraces a new faith due to a change in his/ her religious belief is protected both under International Law as well as Domestic Law as a fundamental right. The issue of conversion becomes contentious, where it is carried out to satisfy social norms. Even if it is voluntary, a conversion can become socially contentious, where the change of religion does not appear to be an expression of free will. It becomes the subject of a dispute when there is reason to suspect that coercion or pressure has influenced the decision. A conversion ceases to be protected by Law; in the event that it is proved that the conversion was forcible. The recent Domestic Laws in India have taken the issue of conversion out of the personal domain. Instances have come to light where disinterested third parties have invoked such laws to obstruct inter-faith marriages. Therefore, such legislation appears to be, in operation, hampering the right to freedom of religion of affected individuals. There is a danger that all inter-faith marriages maybe labelled as forcible conversions, and regarded as being an expression of 'love jihad', even when facts maybe to the contrary. It is possible that the State might be seen as seeking out the role of arbiter in a religious matter, which goes against the principle of separation of the State and religion in a secular society. Such cases will

⁷³ BIELEFELDT, *supra* note 64.

further increase the burden on the Police, which will have to investigate what is essentially a civil case, and add to the work of a District Magistrate, in a system that is already plagued by bureaucratic delays in routine functioning.

On the other hand, such legislation, if applied impartially, can effectively put to rest all allegations of forcible conversion. All conversions will become a matter of public record. In India, personal law is different for different religious denominations. Therefore, the law regarding issues of marriage, divorce and inheritance cannot be applied effectively to a couple, who retain their original faiths even after marriage. Therefore, there is some merit in the belief that after marriage the couple should practise the same religion. While marriage is in the personal domain of a couple, there is no legal compulsion for conversion for it to be valid. Nevertheless, indiscriminate use of terms such as 'Love Jihad' to describe all inter-faith marriages can potentially create friction between communities. Therefore, the provision that permits anybody in the community to allege forcible conversion needs to be re-examined. There is every possibility that out of fear of harassment, people may be encouraged to conceal conversions and inter-faith marriages.

Therefore, it is suggested that the ordinance changes its provisions regarding the involvement of the public along with the Court, to ensure that various International Legal provisions and domestic constitutional rights are not violated. This being said, it is also important to formulate a legal framework which has a reasonable and practical approach to tackle instances of forceful conversion. Standardisation of documentation during conversion may help remove the lacunae in deciding facts in such cases. In the long run, there is a need to introduce a uniform personal law to cover all religious denominations. The obligation of the State to protect personal liberty and freedom should not be allowed to be overpowered by religious activism in cases of conversion. An even approach towards all communities will enhance social and communal harmony.
