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# Inter Faith Marriages in India with Special Reference to Anti-Conversion Laws

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## ABSTRACT

*There are a vast number of religious differences and problems for a nation that prides itself on being secular and tolerant. This paper examines interfaith marriages in India. Though interfaith marriages are a relatively limited proportion of all marriages in India, it involves many individuals when we consider the sheer population of India. Being an interfaith couple in India is getting more difficult by the day, apart from the social pressure that wells up, couples also face difficulties posed to them by complex and rigid laws. These problems make it increasingly difficult for our secular country to be truly harmonious.*

*This paper takes a close look at how individuals who practice different religions tend to get married, while also focusing on the problems and roadblocks they face. In this paper we study how there are multiple ways in which interfaith couples can get married, first of all, through The Special Marriage Act. We then look at how a interfaith marriage is solemnized under the Special Marriage Act and also highlight that when married through The Special Marriage Act, couples face different difficulty and obstacles, and thus prefer to opt for the other ways to solemnize marriage. The other fairly easy way requires conversion of one of the party to the marriage, and post conversion, the marriage is solemnized under the personal laws of the couple. This paper then comes across laws that have just been introduced, which put additional checks or barriers in the couple's way. This paper presents points from both those in support and those against the provisions of the anti-conversion law before concluding with the authors' opinions.*

## I. INTER FAITH MARRIAGES IN INDIA

India has always been a place with a rigid social structure, across religions and even among sects within particular religions. There have been at many instances sense of hostilities on religious lines in a country which prides itself on being secular. And even today when marrying inter-caste is frowned upon, marrying across different religion brings with it even more difficulties for the couple. Although there does not exist data by the Central or State

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Government on statistics pertaining to inter-religious or inter-caste marriage the number itself is not that large. It was further found by in a study in Dynamics of interreligious and inter caste marriages that only 2.1% of all marriages in India are inter-religious. This only highlights the rigid social structure surrounding interfaith marriages in India. Marrying outside of their religion subjected an individual to problems both at family and community level. There have been instances in India where families of couple who were against interfaith marriage resorted to violence. Many communities and private actors also have been harmful to couples in inter religious and inter caste marriages through violence, boycott on community level and through, “Honour Killings”.

There does lack a record on the number of interfaith marriages in India, government both at Centre and State have failed to conduct surveys on interfaith marriages although various surveys have been conducted by individual researchers which are in consonance and state that inter-faith marriages have significant yet limited impact on the society at large.

A study conducted suggested that 2.21% of women in the under the scope of study and between the age of 15-49 were married outside of their religion. With 3.5 percent of women holding mixed marriages, Christians have the highest rate of women marrying outside their religion. Sikhs are in second place with 3.2 percent, Hindus have 1.5 percent, and Muslims have 0.6 percent. The details, on the other hand, does not reveal what religion the women are marrying into. Punjab has the highest rate of inter faith marriages, at 7.8%. This high number can be due to the fact that Sikhism and Hinduism have common religious traditions and rituals. Mixed marriages are also prevalent in Jharkhand (5.7 percent) and Andhra Pradesh (4.9 percent). Bengal has the lowest number of mixed marriages, at 0.3 percent, and Chhattisgarh has the highest, at 0.6 percent<sup>2</sup>.

## **II. SPECIAL MARRIAGE ACT**

In case of interfaith marriages, one possible option present to the parties for marrying each other is the, Special Marriage Act, 1954. The Special Marriage Act, was introduced in 1954 as one of the many of a reforms and updates to law surrounding personal matters, it was prioritized by then Prime Minister Jawaharlal Nehru in India. The Special Marriage Act was created to regulate marriages that could not be solemnized according to religious traditions, which basically meant Inter religious or inter caste unions. Under this act there are no requirements of any religious customs or practices and marriage is to be solemnized by a

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<sup>2</sup> Shaikh, Explained: What a study in 2013 revealed about interfaith marriages in India., The Indian Express, (Oct. 22, 2020), <https://indianexpress.com/article/explained/explained-what-a-2013-study-revealed-about-interfaith-marriages-6742991/>.

government official after a certain set of procedures. It is often said that such procedures are extensive and at the same time invade the privacy and security of the couple.

Under the provisions of the Special Marriage Act, there are no religious rituals involved, and the marriage is notarised and solemnized by a Government-appointed Marriage Officer, who must be notified in the specified format by the involved parties to the marriage. The Marriage Officer must record this detail in the Marriage Officer's Register and publish a public notice for the submission of the objection. The union must take place after 30 days of the public notice's issuance and within two months of the notice's issuance.

The applicants, alongside three witnesses, must sign a statement in the manner stated.

Post that the marriage officer, certifies the marriage and registers it in the Marriage Certificate book, only if all the provisions of section 15<sup>3</sup> of the Special Marriage Act, 1954 are met.

Provisions that need to be highlighted and are often subject to contentions are that the spouses should be residing in the district of the office of the marriage counsellor for at least 30 days.

Further many authors have stated that the provisions of Special Marriage Act, 1954 pose as hurdles for many interfaith couples due to the sensitive nature of their union and along with the objections of their family and pressure from the society.

The key provisions which may directly or indirectly lead to being a source of harassment for couples, include

Section 5- It poses as the first challenge to the couples, this section deals with intending parties' place of residence, needing at least one among them to have resided in the district for at least 30 days period prior that date as to when such notification is issued to the district's Marriage Office.

Section 6- This section requires the marriage office to on receiving the notice for marriage to publish such notice with all relevant details in the a, "Conspicuous place in the office ". This section is in place so valid objection can be raised which either pertain to a living spouse or to raise an objection of the spouses being in the degree of prohibited relationship. But due to the presence of certain societal extremist, this section which reveals sensitive information of the spouses of an interfaith marriage, has become a cause of concern and fear.

Section 7- This section allows someone to object to the marriage until the expiration of thirty days from the date on which such notification was issued on the grounds that it would violate one or more of the requirements set out in section 4, namely, neither party has a living partner,

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<sup>3</sup> The Special Marriage Act, 1954, No.43 of 1954, Act of Parliament of India, §15, (1954)

neither party is incapable of giving a legitimate consent due to insanity, and the prerequisite of minimum age.

Section 8- This section needs the Marriage Officer to investigate the objection and determine that it does not preclude the marriage from being solemnized. If the objection is upheld within 30 days, any party to the proposed marriage can file an appeal with the district court, whose ruling is final<sup>4</sup>.

These sections<sup>5</sup> although not intended to be, have been a tool for harassment for couples in an interfaith marriage. These section infringe the parties' right to privacy, since many of couples who marry under Special Marriage Acts have families who are opposed to their union. Many who object to marriage may only do so to fulfil their wish to bully the couple to be married in order to get them to back out of their planned marriage, so these clauses make it difficult for couples in an interfaith marriage and serve as an invite to harass the parties.

It was stated by the court in the Case of *Pranav Kumar Mishra v. Govt of NCT Delhi*<sup>6</sup>, that, “The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances it may even endanger the life or limb of one or the other party due to parental interference. In such circumstances, if such a procedure is being adopted by the authorities, it is completely whimsical and without authority of law.”

On January 12, Allahabad High court passed a judgement which gave the couple who are marrying the choice of whether or not they want to publish a public notice, which would lead to objections being raised, if any. It was stated by the court, “Personal liberty and privacy are fundamental rights including within their sphere right to choose partner without interference from State, family or society,”<sup>7</sup>.

This judgement prioritizes the privacy of couples and individuals and highlighted that fact there exist no such strict provision under the personal laws which call for objection or require publication of notification, the court hence stated that there would be no purpose of the law if the Special Marriage Act, 1954, was more limiting and obstructive<sup>8</sup>.

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<sup>4</sup> Swaraj, Inconsistencies In Special Marriage Act, 1954, Legal Services India, Retrieved on (Apr. 20, 2021), Available at: <http://www.legalservicesindia.com/article/1626/Inconsistencies-In-Special-Marriage-Act,-1954.html>.

<sup>5</sup> The Special Marriage Act, § 5, 6, 7, 8. (1954)

<sup>6</sup> *Pranav Kumar Mishra & Anr. vs Govt. Of Nct. Of Delhi & Anr.* on 8 Apr. 2009, Delhi High Court, WP(C) No.748/2009, (Apr.8, 2009 )

<sup>7</sup> *Safiya Sultana v. State of Uttar Pradesh*, 16907 of 2020, Allahabad High Court, Available at: [https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf\\_upload/habc1169072020-387403.pdf](https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf_upload/habc1169072020-387403.pdf)

<sup>8</sup> *Surbhi Karwa*, Allahabad HC Order on Special Marriage Act Is Progressive. But Is It Enough?, *The Wire*, (Jan.

In *Kuldeep Singh Meena v. State of Rajasthan*<sup>9</sup>, the Rajasthan High Court upheld this reasoning, adding that the Special Marriage Act only allows the notification to be posted on a conspicuous notice board at the Marriage Officer's office. Officials should not enforce additional restrictions and requirements on couples other than those stated in the Special Marriage Act, according to the high court.

While the court struck down the Gurugram Check List in July 2018, the Punjab and Haryana High Court emphasized that The Special Marriage Act had to be enforced in a way that promoted interfaith marriages, it was held by the court that, “The state is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954”<sup>10</sup>.

A report by law commission<sup>11</sup> also highlighted the hassles and harassment caused to interfaith couples and how to avoid this there should be simplification brought in the Special Marriage Act.

Although very serious questions come into the picture when considering the issue of public notice and as posed by then Chief Justice of India, SA Bobde, that what would be recourse if a wife or husband ran away from their first marriage and intend to marry again, and how would parents find out about the whereabouts of their children who ran away. These problem although trivial are worrisome and are addressed in concept by issuance of the public notice. On one had these provisions serve to protect the sanctity of the existing marriage, they invade the privacy of couples along with posing possible harm to interfaith couples<sup>12</sup>.

This nature of the Special Marriage Act, puts in front of couples various problems and difficulties which otherwise are seldom present in marriage among members of the same religion. The ease in marriage offered by this puts in front of the already tested couples the path to marriage through conversion. When one spouse decides to convert to the faith of the other, the marriage will be solemnized almost in a day, with only the rituals of that religion differing,

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21, 2021), Available at: <https://thewire.in/rights/allahabad-hc-order-on-special-marriage-act-is-progressive-but-is-it-enough>.

<sup>9</sup> *Kuldeep Singh Meena vs State Of Raj And Ors* on 20 Feb. 2018,

<sup>10</sup> *A and Another v. State of Haryana and others*, Punjab and Haryana High Court, CWP 15296 2018 20 07 2018, (July 20, 2018).

<sup>11</sup> Law Commission of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, report No. 242

<sup>12</sup> Amit Jaiswal, *Special Marriage Act and anti-conversion Ordinance: Cause and effect relationship*, judgment by Allahabad High Court, and a few suggestions, Bar and Bench, (Feb.21, 2021 )

and a perfectly legal union will be obtained. According to the essence of the Special Marriage Act and its provisions, interfaith partners are essentially, in many cases, who are pushed into a corner, resort to converting to another religion in order to get married.

### **III. CONVERSION IN INDIA**

The practice of Conversion, that is when an individual changes the religion he practices, is not new in India and has been occurring for centuries. During the Mughal Empire, people either chose to practice Islam or were coerced into it. Later, during the rule of the East India Company, there were both instances of conversion to Christianity both with free consent and under coercion. Many kings, throughout the course of the Indian Subcontinent, have subjected their citizens to conversion either by incentives or through arms.

In contemporary India, all citizens have the right to practice any religion they want, but this right is often snatched away, sometimes by the state, sometimes by fellow citizens. There have been numerous instances in modern India where individuals or groups have been forced to convert to another religion by vigilante groups

There have been various attempts to bring in nationalised laws on conversion, they although have failed, have not stopped some states for proposing and implementing them. These conversion laws, aim to target those instances of conversion which occur without the free consent of the party. Many states have such laws which aim to provide “Freedom of Religion” these laws are in place to prohibit religious conversions by force, bribery, or inducement.

Based on the studies conducted by the United States Commission on International Religious Freedom (USCIRF) in the time period ranging from 2016 to 2018, the existence of the anti-conversion laws, construct a threatening, and at times abusive, climate for religious minority groups since they do not demand any evidence to justify allegations of misconduct.

Apart from the other reasons one factor as discussed above which leads many individuals to convert is the ease of marriage offered, when amongst members of the same faith but at the same time a marriage is also declared invalid if it was solemnized for the primary intention of conversion, or if a conversion was performed exclusively for the purpose of marriage, according to laws passed in Himachal Pradesh, Uttarakhand Uttar Pradesh.

The laws of these state impose harsher restrictions along with stricter requirements on couples and individuals which gives more power to the state. Every resident of India has the freedom to profess, practice, and spread their religion under the Indian constitution. However, fair

limitations are imposed on this freedom, including the coercive nature of religious conversion. An individual can indeed be enticed or lured to convert for material benefits. Coercive and deceptive conversion is a challenge to the country's social structure. Where there are rumours of forcible conversions, the other group reacts with outrage and intimidation. Events of forceful conversion have often eroded the trust of many members of religious groups from another<sup>13</sup>.

But one must also consider that anti-conversion legislation maintains social hierarchies by depicting those socioeconomically vulnerable individuals as innately frail and gullible. Finally, by making it more difficult for individuals to alter their identity, the rules uphold traditional social categories. Converts must overcome practical obstacles when attempting to convert to another religion or even requesting permission to convert; realistically, the act of sending a notice and requesting permission to convert makes a private decision a public one. Conversion laws are part of a larger framework of "protective" regulations aimed at certain communities, most often women. These laws can provide security, but they also impose restrictions.

There has traditionally been apprehension about conversions, but why has there been such a sudden uptick in anti-conversion legislation? Anti-conversion legislation can be said to be politically motivated and is partially a political calculation; rallying a majority by presenting a catchy social question with religious elements is a popular election tactic. In certain states, politicians who oppose conversion will attract a majority of voters while only polarising the minority groups<sup>14</sup>.

#### **IV. UTTAR PRADESH PROHIBITION OF UNLAWFUL RELIGIOUS CONVERSION ACT, 2020**

##### **Provisions of the Act**

Despite the fact that the country has had anti-conversion laws in place for decades, the statute in question has raised both eyebrows and voices. This ordinance received the clearance of the Uttar Pradesh State cabinet on the 24th day of November, 2021 and then received the assent of the governor on the 28th of the same month. This law, which aims to counter specific forms of conversion, makes religious conversions for marriage in Uttar Pradesh non-bailable and punishable by up to ten years in prison if done by deception, coercion, allurement, or other allegedly dishonest means. It also mandates that religious conversions for marriage in Uttar Pradesh be authorised by a district magistrate. The bill also has harsh penalties for mass

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<sup>13</sup> The True Picture, Why India Needs an Anti-Conversion Law, (Sept. 16, 2019), <https://www.thetruepicture.org/india-needs-anti-conversion-law/>.

<sup>14</sup> Laura Dudley Jenkins, LEGAL LIMITS ON RELIGIOUS CONVERSION IN INDIA, (2008), available at <http://www.law.duke.edu/journals/lcp>.



conversion, such as the termination of a charitable organization's membership if it engages in mass religious conversion. It defines allurement as "any gift, gratification, easy money or material benefit either in cash or kind, employment, free education in a reputed school run by any religious body or better lifestyle, divine pleasure or otherwise".

Religious conversions for marrying in Uttar Pradesh must be authorised by a district magistrate, according to this law. But at the same time, according to the Uttar Pradesh Law Commission, it does not have any restrictions on interfaith marriage. But at the same time, it is argued by many that the law's ambiguous wording makes it possible for police to question any interfaith marriage and harass couples in interfaith marriages. The main points of contention are the denial of religious freedom and the restriction of women's right to choose their spouse.

There have also been some in support of the law. They have stated that the law applies to people of all faiths and allows for the supervision of conversion by a prescribed decree and notification to authorities in order to prevent illegal conversions. It correctly states that marriages entered into with the sole intention of illegal conversion may be declared invalid by the court system upon appeal by one of the involved individuals in the marriage.

### **In support of the Act**

Those in support of the ordinance say that it makes no negative reference to interfaith weddings and makes no attempt to ban or regulate them.

And as implied by the ordinance's title, the statute is intended to prohibit illegal religious conversions by unjust means.

They argue that it exists solely for the purpose of prohibiting such conversions. The ordinance contains a clause nullifying marriages solemnized with the 'single purpose' of improperly converting the bride or groom to a different religion than their original faith.

Few claim that after close analysis of the majority of writings against this ordinance shows that their critiques are built on erroneous conclusions that are not supported or ingrained in the statute's content, but rather on the critics' own beliefs and biases.

224 former judges, civil servants, diplomats, and members of the armed forces wrote to the Chief Minister in favour of the UP legislation against 'unlawful conversion.' stating that "The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, extends to anyone regardless of religion, regulates conversion by prescribed declarations, and notifies authorities to rule out unlawful conversions based on false representation, force, undue power, bribery, allurement, fraudulent means, or marriages, among other things. It correctly provides

that marriages entered into solely for the purpose of illegitimate conversion can be ruled null and invalid by the family courts upon appeal by one of the two parties in a marriage."<sup>15</sup>.

Further, it is argued by those in support of this act that in certain statutes the legislature has broadened the definition of terms such as 'bribery' or 'dowry' in order to avoid including a variety of activities that could breach the legislation's intent and the same is the case with the term allurement.

When examining the problem of allurement and the concerns expressed by critics of this ordinance about its alleged exploitation or violation, it is critical to remember that while statutory or penal statute is predicated on the definition of purpose, all law — civil or criminal — is fundamentally predicated on the presumption of causality.

Thus, the suspicion that a coincidental and simple taking of a gift from an individual of another religion prior to conversion will harm the validity and meaning behind the conversion and is not only baseless, but also risky from a legal interpretation standpoint.

It is highlighted by those in support that the law establishes a system to ensure that conversions between religions occur only with the free consent of the convert. This is done as the convertor must have a 30-day notice prior to the conversion. The authorities are expected to perform a routine investigation into the circumstances around the conversion. This protocol is followed to avoid conversions obtained by unethical means.

The fallacy of the contention that this ordinance and the protocol defined pursuant to it are intended to ban interfaith marriages becomes clear as one considers that the Union's legislature has enacted a particular law to encourage and regulate interfaith marriages, and under that law, no adult getting married is required to convert from his or her religion.

The 1954 Special Marriage Act establishes the legal framework for interfaith partnerships, and as such, they are not forbidden nor are they supposed to be prohibited by this ordinance.

Thus, there is no requirement for couples to have the same religion in order to marry, nor is there any requirement for couples to convert after marriage in order for it to be registered. Additionally, it is emphasized that the presumption of evidence is on the convicted. The duty of evidence is on the victim under a number of other criminal statutes, such as the Protection of Women from Domestic Violence Act<sup>16</sup>, or the Protection of Children from Sexual Offences

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<sup>15</sup> ANI, Over 200 retired judges, civil servants, diplomats, armed forces veterans support UP law against 'unlawful conversion', ANI News, (Jan. 4, 2021), <https://www.aninews.in/news/national/general-news/over-200-retired-judges-civil-servants-diplomats-armed-forces-veterans-support-up-law-against-unlawful-conversion20210104225629/>.

<sup>16</sup> The Protection of Women from Domestic Violence Act, 2005, Central Government Act, Available at:

Act<sup>17</sup>.

It is generally accepted that plaintiffs in such situations are in a lesser or subordinate role to the convicted. In this case, if a person's religion is converted in certain circumstances and a lawsuit is lodged, this minimal right is justified, since the person is placed on a lower pedestal.

Lastly, it was highlighted that such a law is currently needed in Uttar Pradesh because the issue of coercive and deceptive conversions is the elephant in the room that, if overlooked, would destabilize public order. Regardless of faith, it is the state's duty to enact protective legislation, particularly though one person's liberty is jeopardized<sup>18</sup>.

### **Against the act**

There exists tension between the State's legitimate objective in enacting this law and the constitutional right to privacy and the right to marry a person of one's choosing as embodied in Article 21 of the Indian Constitution<sup>19</sup> ("Constitution"). Additionally, many claim that this ordinance flagrantly denies the freedom to openly observe and profess faith, along with the fact that there is little or no proof of illegal conversion in the state.

By compelling the parties concerned to abstain from conversion by marriage, the Ordinance strikes the intimate concept of marriage. Section 8 of the Ordinance needs the party to the marriage to notify the District Magistrate or Additional District Magistrate (as empowered by the former) sixty days in advance that person wishes to convert their religion freely. This is a significant constitutional problem. Articles 21 and 25<sup>20</sup> of the Constitution, respectively, contain references to the right to secrecy and freedom of conscience. With the Allahabad High Court<sup>21</sup> opposing the need for obligatory publishing of notice inviting protests under the Special Marriage Act, the legal situation is correctly skewed against privacy rights over the social interest in the private act. However, by requiring declaration, the State could be enacting irrational measures to stifle interfaith marriages. For the time being, interfaith marriages are subject to extensive scrutiny, and in the absence of a declaration requirement, the police may forbid such marriages from being solemnized.

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[https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection\\_of\\_women\\_from\\_domestic\\_violence\\_act%2C\\_2005.pdf](https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf), Last accessed on (May 15, 2021).

<sup>17</sup> The Protection of Children from Sexual Offences Act, 2012, Central Government Act, Available at <https://www.indiacode.nic.in/handle/123456789/2079?locale=en>, Last accessed on (May 15, 2021 ).

<sup>18</sup> Tejasvi Surya & Suyash Pande, UP Ordinance On Religious Conversion Is Being Misconstrued: Here's Why It Will Pass Judicial Scrutiny, *SwarajMag*, (Dec.21, 2020), <https://swarajyamag.com/politics/up-ordinance-on-religious-conversion-is-being-misconstrued-heres-why-it-will-pass-judicial-scrutiny>.

<sup>19</sup> Indian Const. art. 21.

<sup>20</sup> Indian Const. art. 25.

<sup>21</sup> Amit Jaiswal, Special Marriage Act and anti-conversion Ordinance: Cause and effect relationship, judgment by Allahabad High Court, and a few suggestions, *Bar and Bench*, (Feb.21, 2021 )

According to some, another affront to the right to privacy is Clause 3 of Section 8, which empowers the District Magistrate to perform an investigation by the police in order to ascertain the conversion's 'true meaning and reason.' As the Supreme Court correctly said in *Shafin Jahan v. Asokan K.M.*<sup>22</sup>, traditional principles and morals have a place but do not supersede constitutionally protected rights. The right to choose one's religion is critical to one's sovereignty, and ensuring this right reinforces the Constitution's core values. In a representative society governed by the rule of law, the police cannot be allowed to intrude into citizens' private domains, especially in order to determine the rationale for exercising constitutionally guaranteed human autonomy to conscience and faith. Through legitimizing their authority to infringe on an individual's privacy in order to convert to the faith of his or her partner voluntarily (a protected privilege under Article 21 in comparison to Article 25) under the pretext of determining the reason for the conversion, the Ordinance lays the groundwork for an unconstitutional incursion on individuals' constitutional right to privacy. Hence, it is believed that there is a complete violation of individuals' human rights.

The ordinance is also called out to be illegal by some stating that it violates not only the universal right to privacy, but also the fundamental right of people to exercise and profess a religion of their choosing, as mentioned in Article 25. and there is no data or evidence on record to support the State's goal of prohibiting 'conversion by marriage' unless the converting individual freely indicates that such conversion is not voluntary. Without a valid State objective that outweighs an individual's right to choose a religion and then a spouse, it is argued that the Ordinance as enacted is manifestly discriminatory and thus unconstitutional. It is claimed that the means used to accomplish the illegitimate goal encroach on peoples' personal lives. The means guarantee that any religious change is thoroughly investigated, thus impinging on individuals' liberty, and the purpose effectively prohibits spouses from voluntarily adopting another religion (s) by marriage.

It is also argued that Section 3 of the Ordinance forbids anybody from converting or attempting to convert another person "directly or indirectly" from one religion to another by marriage or other means. The Section is imprecisely written and vests the administration with unguided authority to bar couples from consensually marrying after voluntary religious conversion. This is mainly because it empowers the administration to infringe upon an individual's constitutional right to choose a mate if they have not enrolled in accordance with the UP Ordinance's requirements.

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<sup>22</sup> *Shafin Jahan vs Asokan K.M.*, CRIMINAL APPEAL NO. 366 OF 2018, Supreme Court of India, 8 Mar. 2018.

Additionally, section 4 of the Ordinance empowers any aggrieved citizen, his or her guardians, or any other person associated by blood to file a FIR in the event that anyone violates the preceding Section 3. It is argued that the Section not only contradicts the Supreme Court's interpretation of law in *Navtej Singh Johar v. Union of India*<sup>23</sup>, but also the Supreme Court's liberal findings in *Shakti Vahini v. Union of India*<sup>24</sup>. The Supreme Court has held in *Shakti Vahini* that when two adults mutually consensually choose each other as marriage partners, it is a representation of their decision recognised under Articles 19 and 21 of the Constitution<sup>25</sup>. Additionally, it held that permission of kin, society, or clan is not required when two adults choose to marry. However, the Ordinance creates an exception to this constitutional right that is against the right's fulfilment.

It is also highlighted that the right to marry the person of one's choosing and the right to privacy are universal liberties that cannot be arbitrarily limited by the State and its executive agencies. The Allahabad High Court's judgment in *Safiya Sultana v. the State of Uttar Pradesh*<sup>26</sup> reaffirms this position, holding that requiring publication of notices inviting challenges to marriage under the Special Marriage Act, 1954 would violate fundamental rights to liberty and privacy, even within its sphere, the freedom to choose for marriage without interference from others. It is argued by many that through this ordinance, constitutional morality is being trampled by majorities social customs and beliefs<sup>27</sup>.

Justice AP Shah, an erstwhile Delhi High Court judge, said the current legislation represents the ideology of a "khap panchayat", with the primary goal of subjugating women. According to the retired judge, some of its clauses breach the universal right to religious freedom, "cutting to the heart of the right to life and liberty guaranteed by the constitution." He said that this ordinance was "capable of great public mischief." "It's impossible to imagine it was enacted by a legislature in a democracy ruled by the rule of law and a constitution," the retired judge observed. "In any court proceeding, Conversion is believed to be unconstitutional, the prosecution typically bears the presumption of evidence. Any religious conversion is considered to be unconstitutional under this ordinance. The duty of evidence is on the person charged with unlawful conversion to establish that the conversion was lawful. As a result, a

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<sup>23</sup> *Navtej Singh Johar vs Union Of India* Ministry Of Law, CRIMINAL NO. 76 OF 2016, 6 Sept. 2018

<sup>24</sup> *Shakti Vahini vs Union Of India*, (CIVIL) NO. 231 OF 2010, Supreme Court of India, 27 Mar. 2018,

<sup>25</sup> Indian Const. art. 19 § 21.

<sup>26</sup> *Smt. Safiya Sultana Thru. Husband Abhishek Kumar Pandey & Anr v. State Of U.P. Thru. Secy. Home, Lko. & Ors.*, Uttar Pradesh High Court, (Jan.12, 2021).

<sup>27</sup> Rathore & Chandrasekhar, *Analysing the Unlawful Religious Conversion Ordinance, 2020 through the prism of proportionality*, NLUJ Law Review, (Mar.21, 2021), <http://www.nlujlawreview.in/analysing-the-unlawful-religious-conversion-ordinance-2020-through-the-prism-of-proportionality/>.

presumption of guilt exists. This is a cognizable offense. It is not bailable, and the police have the authority to arrest someone "As stated by Justice Shah in regard to the great power it gives to the authorities. According to him, the ordinance has already taken its toll, with widespread arrests and reports of separation. Before the ordinance acquiring the assent, he stated that, the ordinance must be repealed immediately. And most certainly must not be passed into a statute. " We must halt the erosion of these constitutionally protected liberties. This can only be accomplished by the judiciary "He mentioned<sup>28</sup>.

In a written note, Justice Madan B Lokur said that "it would take a miracle to uphold its constitutional legitimacy," while calling it "one of the strangest pieces of legislation" he had ever seen. While the former Supreme Court justice said that he was opposed to forcible or illegal conversions, he stated that he was opposed to penalizing voluntary conversions. Justice Lokur challenged the provision stating that the burden of evidence must be on the convicted, how the law's concept of "allurement" was way too broad, and how curious it was that although conversion was considered unlawful, reconversion to the immediate faith was not. He also asked how marriages for illegitimate conversions could be performed in the manner contemplated by the statute, pointing out that even children born of such marriages would bear the brunt. "How is it possible to execute an illegitimate conversion by marriage? I can understand an illegal conversion for the purpose of marriage, but not the reverse. And after marriage, conversion renders the conversion null and void. Thus, if a woman moves to another religion, the union is null and invalid, and the offspring of the otherwise happily married couple are immediately declared illegitimate "He penned. Justice Lokur also expressed reservations about the law's clause requiring converts to submit a declaration to the District Magistrate, who would then post a copy of the declaration on his office notice board. "What is the intention of a post-conversion notice? When an IPC (Indian Penal Code) offence is committed, no note of the crime is posted. What is so unique about a conversion, whether legal or illegal, that it should be made public? "he enquired<sup>29</sup>.

Justice Deepak Gupta, a retired Supreme Court judge, has found the legislation "completely unjust," arguing that it robs any human being of their right to choose.

He stated that the legislation's sole purpose is to criminalize conversion for the purpose of

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<sup>28</sup> A.P. Shah, 'Love Jihad' Ordinance Is Symbolic of Social Fabric Being Aggressively Changed: Justice A.P. Shah, *The Wire*, (Jan. 31, 2021), <https://thewire.in/law/love-jihad-ordinance-communal-rhetoric-divisive-justice-ap-shah>.

<sup>29</sup> Scroll.in, 'Love jihad': UP's law has many defects, cannot be sustained, says ex-SC judge Madan Lokur, (Dec.23, 2020), <https://scroll.in/latest/982125/love-jihad-ups-law-has-many-defects-cannot-be-sustained-says-ex-sc-judge-madan-lokur/>.

marriage and partnerships that require conversion, as many states have enacted anti-conversion legislation that has been enforced by the courts to address forcible and illegitimate conversions. He emphasized what the judges said about the law's ambiguous concept of allurements. "In any case, what concern does the government have with any individual's personal beliefs? Our Constitution grants each person the right to not only religious freedom, but also the right to have his or her own opinion, which need not be religious; you may be an atheist, an agnostic, or someone else. However, the freedom to believe is protected by the Constitution, as is our right to change our views." He said. When questioned about the urgency of hearing petitions questioning the legislation, he said that the law was being "misused."

"Because the legislation is said to be valid even when it is promulgated, the cases I read include marriages that occurred several months before the law took effect. Our police and administration seem to be more obedient than the king himself, and they are only interested in proving that something is wrong." He said. "An individual's choice to marry or not to marry and to choose the spouse is absolute as long as it is not illegal," he wrote in a written statement, noting that neither the adult's parents nor the state has any right to intervene. He said that the Supreme Court's interpretation of the right to privacy in the Puttaswamy<sup>30</sup> case entitles people to defend their right to choose their spouse, as families, marriage, procreation, and sexual orientation are all integral to an individual's dignity<sup>31</sup>.

## V. CONCLUSION

In this paper, we examine interfaith marriages in India and discover that, first and foremost, there is a dearth of official government data on the status of interfaith marriages in the country. We then examine the challenges encountered by interfaith couples who wish to marry. As addressed previously in the paper, one of the options, which is through the Special Marriage Act, introduces some obstacles for individuals, which when combined with social, creates unwarranted problems for the interfaith couple. This, we believe, is one of the primary reasons why many individuals convert their faith and marry under personal religious laws. The Special Marriage Act is written in such a way that it creates complications for the couple both directly and indirectly. One way to solve this is to streamline the process of marrying under the Special Marriage Act and to make interfaith marriages simpler. This would then lower the instances of religious conversions solely for the purpose of marriage.

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<sup>30</sup> Justice K.S. Puttaswamy vs Union Of India, CIVIL NO. 494 OF 2012.

<sup>31</sup> Mariyam Alavi, UP's Anti-Conversion Law "Unconstitutional", Say 4 Former Judges, NDTV.com, (Dec.20, 2020), <https://www.ndtv.com/india-news/love-jihad-ups-anti-conversion-law-unconstitutional-say-4-former-judges-2340694>.

We then address the scope and validity of Uttar Pradesh's Unlawful Conversion Act. Although the rationale given states that the legislation is in place to discourage conversion and is universal in scope, there is no data on the number of instances of forced conversion through or as a result of marriage. The power vested in the authority can and has been shown to be dangerous and can be abused. The laws have been argued to violate the couple's privacy, and in addition to being extremely strong, they are also ambiguous, necessitating reconsideration if not repeal.

While forceful conversion is a serious issue that needs to be tackled, the problems must be looked through a bird's view and must be in a way that it does not encroach upon the rights of individuals.

While not meant to be, parts of The Special Marriage Act have been used to bully couples in interfaith marriages. These sections violate the parties' right to privacy, as many couples marrying under Special Marriage Acts face opposition from their families. Many opponents of marriage may wish to threaten the couple into marriage in order to coerce them into abandoning their plans, and so these provisions make it more difficult for couples engaged in interfaith marriages and encourage harassment of the parties. The court held that the Special Marriage Act must be enforced in a manner that promotes interfaith marriages, noting that "the state is not concerned with the marriage itself but with the procedure it adopts, which must reflect the changed times in a secular nation by promoting interfaith marriages rather than raising eyebrows and laying snares and land mines underneath."

There is a conflict between the State's justifiable purpose in enacting this law and the way it will be enforced, the constitutional right to privacy and the right to marry the person of one's choice guaranteed by Article 21 of the Indian Constitution of the minority are bound to be violated by those in majority and can lead to violations due to the vast power.

As a result, the Uttar Pradesh Unlawful Conversion Act must be reconsidered and redrawn in such a way that ambiguity is eliminated and certain checks and balances are introduced, and, as courts have already stated, marrying under the Special Marriage Act should be made easier in order to avoid conflicts that may arise as a result of conversion and to prevent Interfaith couples from facing unwarranted hardships.

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