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ANTI-CONVERSION LAWS AND MARRIAGE IN INDIA : ANALYSING THE CONSTITUTIONALITY OF THE UTTAR PRADESH PROHIBITION OF UNLAWFUL CONVERSION OF RELIGION ORDINANCE, 2020

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Abstract

The Governor of Uttar Pradesh recently promulgated an Ordinance to provide a procedure for religious conversions and penalise conversions that are in contravention of the provisions thereof, which translates into a direct attack on inter-faith marriages, as marriage is stipulated as one of the unlawful ways for religious conversions. The Ordinance suffers from inherent procedural and substantive infirmities. It is a gross violation of the freedom of choice in marriage which has been categorically held to be inherent in article 21 by the apex court. It not only exemplifies an abuse of the legislative powers of the executive, but also suffers from constitutional impropriety, in so much as it violates the fundamental right to privacy, as under article 21 of the Constitution of India by the apex court, and the freedom of religion guaranteed under article 25, apart from also creating room for arbitrary action by using vague terminology and thus violating article 14. In light of the ever-increasing communal polarisation in the country, it becomes necessary to tread this path with caution and hence the authors have made an effort to lay bare the various ways in which the Ordinance is not only anti-democratic in spirit but also unconstitutional in form. The article primarily seeks to substantively and procedurally analyse the constitutionality of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 while also briefly discussing the legislative and judicial history of anti-conversion laws in the country vis-à-vis the Supreme Court's ruling in the Rev. Stanislaus judgment.

I. INTRODUCTION

"Liberty, taking the word in its concrete sense consists in the ability to choose."

-Simone Weil

India has seen the enactment and enforcement of anti-conversion laws since the pre-independence era in a bid to conserve the Hindu religious identity. Thereafter, post-independence, different states came up with their own versions of the anti-conversion laws, which are ironically referred to as the "freedom of religion laws". The latest states to join the bandwagon are the states of Uttar Pradesh, Himachal Pradesh and Madhya Pradesh.

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The Uttar Pradesh Government recently came up with an anti-conversion law by way of an Ordinance called the '*Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020*' ('hereinafter The Ordinance'). The law is aimed at providing a procedure for religious conversions and at the same time, prohibiting and penalising unlawful conversions by *misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage*. Thereafter, Himachal Pradesh and Madhya Pradesh Governments followed suit. It is worth noting, that these State laws come in the wake of a failed attempt by the Central Government to come up with a national anti-conversion law owing to the intervention of the Ministry of Law and Justice which rendered a contrary advice stating that the same is purely a state subject under Schedule VII.These laws have received widespread criticism and accusations for being in contravention of rights guaranteed under Part III of the Indian Constitution.

While anti-conversion laws have been enacted many times since independence, what is peculiar now is the fact that the *marriage* has been added as a means of unlawful conversion along with misrepresentation, undue influence, coercion, allurement etc. Time and again, over the years, the Supreme Court has reiterated that the freedom of choice in marriage is an integral part of article 21 of the Constitution of India. The right to marry a person of one's own choice is a part and parcel of the right to live with dignity and the right to privacy. Every human being should have a right to manage his or her personal affairs in a way that suits them without being held accountable to any alien entity. As such, these recent state laws under consideration are as much inhumane as they are unconstitutional.

Part II of the article provides a brief history of the anti-conversion laws in the country, both legislatively and judicially. It will also briefly discuss the apex court's judgment in the *Rev. Stanislaus* judgment along with discussing the criticism it has received to better understand the arguments against the Uttar Pradesh Ordinance. This article under Part III seeks to procedurally and substantively analyse the validity and constitutionality of the Ordinance promulgatedin the state of Uttar Pradeshin light of the other anti-conversion laws in force in India, relevant judicial precedents and the concept of personal liberty, dignity and privacy, as enunciated by the apex court.

II. LEGISLATIVE AND JUDICIAL HISTORY OF ANTI-CONVERSION LAWS IN INDIA

The origin of anti-conversion laws in India can be traced back to the 1930s, when the Hindu princely states enacted such laws in an attempt to preserve the Hindu religious identity in the face of British missionaries.[1]Post-independence, a plethora of anti-conversion laws were introduced, but never enacted, due to lack of parliamentary support. Finally, Odisha and Madhya Pradesh became the first states to introduce anti-conversion laws in the 1960s, and thereafter Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand also enacted such laws, with provisions requiring notice to the district authorities and penalising any contraventions. The corresponding law passed in the state of Gujarat went a step further and required that prior permission be sought from the District Magistrate in case of an individual wanting to convert.[2]

Odisha Freedom of Religion Act, 1967 and Madhya Pradesh Freedom of Religion Act, 1968

The Orissa Freedom of Religion Act, 1967 was brought under judicial scrutiny in 1973, wherein it was declared*ultra vires* the Constitution.[3] The High Court opined that article 25(1) of the Constitution of India guarantees the right to propagate one's religion and conversion is a part of the Christian religion.[4] The Court further held that the term *inducement* has a wide connotation and therefore cannot be said to be covered within the restriction in article 25(1). The Madhya Pradesh Freedom of Religion Act, 1968 used the term *allurement* instead of *inducement* and also defined the same in its definition clause under section 2(a). The High Court of Madhya Pradesh, however, in 1977, upheld the validity of the Act,and held that the Act established equality of religions by prohibiting involuntary conversions by objectionable activities. Later, both these state laws were brought under consideration in the apex court in the case of *Rev. Stanislaus* v. *State of Madhya Pradesh*,[5] which overturned the Orissa High Court judgmentand upheld both the laws.

[1]James Andrew Huff, "Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws" 10(2) *Rutgers J. L. & Religion* 1, 4 (2009).
[2]Gujarat Freedom of Religion Act, 2003 (Act 22 of 2003),s. 5.
[3]*Yulitha Hyde* v. *State of Orissa*AIR 1973 Ori. 116.
[4]*Ibid.*
[5]*Rev. Stanislaus* v. *State of Madhya Pradesh* AIR 1977 SC 908.

Himachal Pradesh Freedom of Religion Act, 2006

The Himachal Pradesh Freedom of Religion Act, 2006, went a step aheadof the Madhya Pradesh and Orissa Acts.[6] The Act stipulated that any person that has been converted to another religion in dereliction to its provisions shall be deemed not to have been converted,[7] and used the term *inducement* instead of *allurement* in its prohibition clause. Further, the prior notice requirement was extended to thirty days under section 4 and the amount of fine and duration of imprisonment had been raised in comparison to other state laws. The Himachal Pradesh High Court read down the Act and struck down section 4 of the Act as being *ultra vires* the Constitution.[8] The court held that the said provisions violated the right to privacy as encompassed under article 21 and further infringed article 14.

Uttarakhand Freedom of Religion Act, 2018

The Uttarakhand Freedom of Religion Act, 2018 was the first state to introduce marriage in the realm of anti-conversion laws. In a*habeas corpus* petition, the Uttarakhand High Court suggested that the Government pass an anti-conversion law on the lines of Madhya Pradesh and Himachal Pradesh.[9]Subsequently, the law enacted stipulated, *inter alia*, that "*any marriage which was done for the sole purpose of conversion by the man of one religion with the woman of another religion either by converting himself before or after marriage or by converting the woman before or after marriage may be declared null and void*".[10] However, the rationale that the court gave for suggesting the enactment was contrary to the objects and reasons of the current law under consideration. The court reasoned that such a law was required to tackle the cases where people convert to other religions only to facilitate marriage whereas the Uttar Pradesh Ordinance, among others, aims to tackle cases where marriage is used as a tool to facilitate conversion.

Supreme Court's view in *Rev. Stanislaus* and its criticism

The Supreme Court in *RatilalPanachand Gandhi* v. *State of Bombay*[11] clarified the provisions of article 25 by holding thatevery person has a fundamental right to exhibit his

[6]*Evangelical Fellowship of India* v. *State of Himachal Pradesh*, CWP No. 438 of 2011.
[7]The Himachal Pradesh Freedom of Religion Act, 2006 (Act 5 of 2006), s. 3.
[8] *Supra* note 6.
[9]ApoorvaMandhani, "Uttarakhand HC Suggests Enactment of Freedom of Religion Act to Curb "Sham Conversions" for Marriage", *Livelaw*, November 20, 2017),available athttp://www.livelaw.in/uttarakhand-hc-suggests-enactment-freedom-religion-act-curb-sham-conversions-marriage-read-order/ (last visited on January 20, 2020).
[10]Uttarakhand Freedom of Religion Act, 2018 (Act 28 of 2018),s. 6.
[11]*RatilalPanachand Gandhi* v. *State of Bombay* 1954 SCR 1035.

belief and ideas in such overt acts as sanctioned by his religion and further to propagate his religious views for edification of others[12]. Later, in *Rev. Stanislaus*, the apex court while upholding the validity of the Madhya Pradesh and Orissa freedom of religion laws opined that propagation of religion included persuasion without coercion but did not include the right to convert any person as that would impinge on the freedom of conscience guaranteed to all the citizens of the country alike.[13] The court reasoned that Article 25 guarantees freedom of religion to the followers of all the religions alike and it can be fairly enjoyed by one only while allowing all others to do the same otherwise public order will be hampered which is encompassed under reasonable restriction to the enjoyment of the freedom so guaranteed. Therefore, there can be no fundamental right to convert any person to one's own religion[14].

The decision of the apex court in the case of *Rev. Stanislaus*, however, has been at the receiving end of criticism on several counts. The judgment failed to discuss the definitions and scope of the terms *inducement* and *allurement* and refuses to include the freedom to convert within the purview of the right to propagate. It was contended that the term propagate was included in Article 25 by the Constitutional assembly, as an assurance to the Indian Christian community that they would have the right to convert. It was further pointed out that without the right to convert, propagation would by itself be covered within the purview of the freedom of speech and expression.

The Uttar Pradesh Prohibition of Unlawful Conversion of Religious Ordinance, 2020

The Uttar Pradesh Ordinance prohibits religious conversion for the purpose of marriage.[15] Any marriage between inter-faith couples where either the man or woman converts to another religion for the sake of marriage, the marriage shall be declared void by the Family Court.[16]The Ordinance is hit by constitutional infirmity on both, procedural as well as substantive grounds since:

- It violates the Fundamental Rights enshrined under Articles 14,19, 21 and 25 of the Constitution and,
- It was passed arbitrarily bypassing the legislative process of the Assembly, when there was no urgent need.

[12] *Ibid.*
[13] *Supra* note 5.
[14] *Ibid.*
[15] The Uttar Pradesh Prohibition of Unlawful Conversion of Religious Ordinance, 2020 (U.P. Ordinance No. 21 of 2020), s. 6.
[16] *Ibid.*

Thus, it becomes imperative to analysethe procedural and substantive irregularities of the Ordinance separately.

III. SUBSTANTIVE IRREGULARITIES

The Ordinance violates the fundamental rights to privacy, dignity, choice and the right to freedom of conscience and free profession, practice and propagation of religion, enshrined under the Constitution. Since, the legislation is manifestly arbitrary, it threatens to have catastrophic implications on inter-faith marriages and thus violates Articles 14, 19, 21 and 25 of the Indian Constitution.

Violation of Article 25 of the Constitution

The preamble equates offences such as misrepresentation, force, allurement, coercion, undue influence and fraudulent means with marriage by stating in its objective to prohibit '*unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage.*[17]

Section 2(a) of the Ordinance defines *allurement* in even broader terms than defined in the aforementioned Madhya Pradesh Act by including factors such as "*better lifestyle, divine displeasure or otherwise*."[18] The use of the term *or otherwise*in the definition of the term *allurement*in section 2(a) (iii)is vague and gives rise to the possibility of being abused by the authorities. Sub-clause (i) of the same includes *gifts* within the definition of allurement. By that logic, even gifting a religious text or a holy book to another person may amount to *allurement* under the legislation.

Section 3 of the Ordinance prohibits any person to convert or attempt to convert a person from one religion to another by using the aforementioned means. Ironically, the proviso to the same section provides that re-conversion of a person to his/her *immediate previous religion* will not be illegal even if it is caused by fraud, coercion, misrepresentation etc. The penalty for contravention of provisions under section 3 has been provided under section 5 which mandates a punishment of imprisonment for a term not less than one year and may extend up to five years along with a fine not less than twenty-five thousand rupees. Also, the proviso

[17] *Supra,* note 15.

[18] *Id.*, s. 2(a): "Allurement" means and includes offer of any temptation in the form of- (i) any gift, gratification, easy money or material benefit in cash or kind; (ii) employment, free education in reputed school run by any religious body; or (iii) better lifestyle, divine displeasure or otherwise.

provides punishment for *mass conversions.* The Ordinance defines mass conversion as an event when two or more persons get converted.[19] The punishment regarding the same gets extended to at least three years imprisonment extendable up to ten years along with a fine not less than fifty thousand rupees.

The *Rev. Stanislaus* judgment by the Supreme Court, though did uphold the validity of the M.P. and Odisha's anti-conversion laws, it did so since the primary purpose of those legislations was to prevent forcible conversions which were against public disorder. The legislations did not list inter-faith marriage as a ground of unlawful conversion and consequently not addressed by the Supreme Court. The subject matter of the legislation in question is inter-faith marriages and the Ordinance by associating inter-faith marriages with breach in public order apprehends the constitutional values of freedom of privacy and freedom to profess, practice and propagate religion and is thus arbitrary in nature.

Violation of Articles 14, 19 and 21

Sections 4, 8 and 9 of the legislation are in gross violation of the Right to Privacy of an individual and also strike upon the freedom of choice in marriage, both ingrained under article 21 of the Constitution. Further, section 4 of the Ordinance enables any person who is related by blood, marriage or adoption to the person converting to lodge a complaint. It means that the parents, siblings, cousins and adopted children of converting individuals can take objection, file complaint and hold a converting individual and his/her spouse to ransom. The section curtails the constitutional liberty provided to every adult citizen in the country to choose the person they want to marry out of their own free will and strikes directly upon the Right to Privacy and dignified life under article 21 of the Constitution.

Further, if a person wishes to convert to another religion, he/she is mandated by section 8 to give a declaration in a prescribed form to the District Magistrate or the Additional District Magistrate stating that he/she is doing so out of free consent, without any coercion, force or undue influence.[20] Post this, the converted person is supposed to tender a declaration to the District Magistrate under section 9, in which the person must furnish details such as date of birth, permanent address, current address, original religion of the person before conversion etc. within sixty days from conversion. Further, the person is supposed to appear before the

[19] *Id.*,s. 2(f).
[20] *Id.*,s. 8.

District Magistrate within 21 days from the date of sending the declaration to establish identity and confirm the contents of the declaration.[21] A failure to do so would render the conversion, illegal and void.[22]

Sections 8 and 9 not only create a double hurdle by allowing objections from the public post the conversion but also give police unfettered powers for which there can be no possible explanation apart from deterring citizens from converting out of their own free will.It is submitted that the provisions of the impugned Ordinance are not just arbitrary in nature and in violation of article 14 but in violation Right to Freedom of Expression under article 19, Right to Privacy which includes the right to freedom of choice in marriage under article 21 and Right to freedom to practice of religion under article 25.

IV. JUDICIAL PRONOUNCEMENTS

Lata Singh* v. *State of U.P.

The Supreme Court in *Lata Singh* v. *State of U.P.*[23]had held that as citizens of a country that is free and democratic, a person can marry whoever he/she likes after attaining the age of majority. The court remarked that if the parents of the boy or the girl do not approve of the marriage, the maximum they can do is cut off social relations with them but they had no right to either harass or threaten to commit acts of violence against the couple. The court also directed police authorities around the country to ensure adequate protection to couples who underwent *inter-caste* or *inter-religious* marriages from harassment and threat to violence against them.Referring to this judgment in 2014, the Supreme Court reiterated the same and held that the Right to freedom of choice in marriage is inherent under article 21 of the Constitution.[24]

Shakti Vahini*v. *Union of India

The *Shakti Vahini*[25]judgment by the Apex Courtin 2018 serves as landmark with respect to the Right of choice in marriage. It was held that the act of choosing of partners, consensually by two adults was a manifestation of their choice protected under articles 19 and 21 of the

[21]*Id.*,s. 9.
[22]*Ibid.*
[23]*Lata Singh* v. *State of Uttar Pradesh* (2006) 5 SCC 475.
[24]*Indian Woman Says Gang-Raped on Orders of Village Court Published in Business and Financial News Dated 23-1-2014 in Re* (2014) 4 SCC 786.
[25]*Shakti Vahini*v. *Union of India* (2018) 7 SCC 192.

Constitution. Emphasis was laid on twin pillars of human existence, that is, *liberty of choice* and *dignity*, both of which the court held were inextricably linked to each other as there is no dignity where there is erosion of choice.Mishra C.J. began the judgment with the statement that "*Assertion of choice is an inseggregable facet of liberty and dignity*".[26]Further, it was held that the choice of two adults to marry out of their own volition, choose their paths and consummate their relationship was a right and any infringement of such a right is a constitutional violation.

Shefin Jahan*v.*Asokan K.N.

A recent judgment of the Supreme Court in *Shefin Jahan*v.*AsokanK.N.*[27]set aside the annulment of marriage of an adult woman named *Hadiya* (original name 'Akhila Asokan') who had converted out of her own free will to marry a Muslim man named Shefin Jahan which was objected by her family. It was held by the apex court that "*the choice of a partner within or outside marriage lies within the exclusive domain of each individual*."[28] Elaborating further, the court opined that the intimacies of marriage lie within the inviolable zone of privacy and that the right to choose one's life partner is absolute and is not affected by matters of faith.The court placed matters of faith, religion and choice in marriage under individual autonomy which was held to be supreme. Finally, it was held that the right to marry a person of one's own choice was an integral part of article 21 that cannot be taken away except by the due process of law. It was further enunciated that the right to make decisions on matters intrinsic to the pursuit of happiness is central to Right to life and liberty guaranteed by the Constitution.

Priyanshi @Km. Shamren and Noor Jehan Begum

The Government of Uttar Pradesh had cited two decisions of single benches of the High Court of Allahabad, namely, *Priyanshi @Km. Shamren*v. *State of Uttar Pradesh*[29]and *Noor Jehan Begum @ Anjali Mishra* v. *State of Uttar Pradesh*[30]which held that religious conversions for the purpose of marriage are illegal and such marriages, void. However, recently, a division bench of the same High Court in *Salamat Ansari* v. *State of Uttar*

[26]*Id.,* at 1.
[27]*ShefinJahan*v.*Asokan K.N.* (2018) 16 SCC 368.
[28]*Ibid.*
[29]*Priyanshi @Km. Shamren*v. *State of Uttar Pradesh* Writ C No. 14288 of 2020.
[30]*Noor Jehan Begum @ Anjali Mishra* v. *State of Uttar Pradesh* Writ C No. 57068 of 2014.

Pradesh[31] held both the single judge decisions to be bad in law. The bench stated that the choice of an individual who has achieved the age of majority is their right and an infringement of that right shall constitute a breach of fundamental right to life and liberty of that individual.

The views expressed in the abovementioned judgment sare in consonance with its views expressed in the landmark case of *K.S. Puttaswamy*v. *Union of India*[32]where it was held that the right to make personal choices form an intrinsic part of the idea of privacy. Chandrachud J. in his concluding remarks opined that it is privacy that provides dignity to an individual and facets of life such as family, marriage, procreation and sexual orientation, all form an integral part of it. To choose a partner and to live with dignity is enshrined under article 21 of the Constitution. Thus, it is clear from the above arguments that the impugned Ordinance is arbitrary in nature and impinges the right to privacy, choice and freedom to profess and practice the religion of their choice and hence in violation of articles 14, 19, 21 and 25 of the Constitution. It is *ultra vires*the constitution and is liable to be struck down on grounds of arbitrariness.

V. PROCEDURAL IRREGULARITY

The Ordinance has been promulgated by the Governor under article 213 of the Constitution which extends the legislative power to the Executive. The power to legislate can be exercised by the Governor only when-

- the Assembly is not in session, and
- Circumstances exist which render it necessary to take immediate action.[33]

Therefore, the Governor's satisfaction as to the presence of an exigent situation and compelling circumstances is a *sine qua non* for the exercise of legislative power by the executive.

Was there an emergent need to promulgate the Ordinance?

The primary reasonprovided by the Uttar Pradesh Government for the enactment is the rise in cases of forced conversions for the purpose of marriage. There were no statistics that were provided as an evidence of compellingcircumstances. There was no concrete data found

[31]*SalamatAnsari* v. *State of Uttar Pradesh*Crl. Mis. Writ Petition No- 11367 of 2020.
[32]*K.S. Puttaswamy*v. *Union of India* (2017) 10 SCC 1.
[33]The Constitution of India, art. 213(1).

regarding forced conversions by the Special Investigation Team (SIT) appointed by the Uttar Pradesh Police to gather relevant information regarding the same as most of the inter-faith marriages turned out to be consensual in nature devoid of any force, coercion, fraud or misrepresentation.[34] The SIT found no evidence of a foreign conspiracy or an organized effort in these inter-faith marriages. Similarly, the National Investigation Agency (NIA), designated to probe if there was a larger criminal design in these marriages happening in Kerala post the *Hadiya*case[35] found no evidence to suggest that women and men were being forced to marry and convert to Islam.[36] Further, even the then Union Minister of StateG.Kishan Reddy, in a written reply in the Parliament to a question replied that no cases of forceful religious conversion have been reported by the Central Agencies.[37] Thus, it seems that there was no urgent need for the Ordinance to be promulgated by by-passing the conventional procedure of law making through the Legislature. The issue being sensitive in nature deserved to be scrutinisedby the Assembly and expert committees before being made a law as it threatens to unsettle the peace and harmony of the society.

Judicial Pronouncements

R.C. Cooper* v. *Union of India

The Supreme Court in *R.C. Cooper* v. *Union of India*[38]held that the power to promulgate Ordinances should only be used in exceptional circumstances by the executive and that it shouldn't become a method to by-pass the scrutiny of the legislature. The case dealt with the power of promulgation of Ordinance by the President under article 123 of the Constitution. However, since the powers provided under articles 123 and 213 are almost identical and contingent upon existence of *emergent circumstances*, rendering immediate action necessary by the President or the Governor, the judgment holds good for article 213 as well. The court held that exercise of Ordinance making power by the executive is strictly conditioned and the

[34]Kunika, "Constitutional Validity of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020", *Livelaw*, December 16, 2020,*available at* :https://www.livelaw.in/columns/love-jihad-constitutional-validity-unlawful-conversion-up-Government-167296?infinitescroll=1.(last visited on Jan. 26, 2020).
[35]*Supra* note 27.
[36]Rajesh Ahuja, "NIA Ends Kerala Probe, Says There's Love But No Jihad", *Hindustan Times*, October 18, 2018, *available at* https://www.hindustantimes.com/india-news/nia-ends-kerala-probe-says-there-s-love-but-no-jihad/story-wlpWR7BMNcdJHkb1MUso4J.html (last visited on Jan. 26, 2020).
[37]Meghnad Bose, "BJP InParl: No Case of Love Jihad. BJP Outside Fight Love Jihad", *The Quint,* February 10, 2020,*available at*https://www.thequint.com/news/politics/bjp-in-parliament-no-cases-of-love-jihad-bjp-outside-fight-love-jihad (last visited on Jan. 26, 2020).
[38]*R.C. Cooper* v. *Union of India* AIR 1970 SC 564.

satisfaction of the executive means firstly, existence of circumstances and secondly, the necessity to take immediate action as a result of those circumstances.[39]

D.C. Wadhwa*v. *State of Bihar

In *D.C. Wadhwa*v. *State of Bihar*,[40]the apex court held that "*the power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends".* The case concerned the repromulgation of multiple ordinances in Bihar without them being enacted into legislations.It was opined by the Constitution Bench that, although it is contrary to democratic norms that the executive has any law-making power at all, but the power under article 213 has been provided to deal with an *emergent situation* and should thus be limited in its use.[41]It was further stated that since the Ordinance making power is an emergency power, it cannot be resorted to by the executive to take over the law making function of the Legislature when it is not is session since it would be a blatant subversion of the democratic process. Thus, it was held that a constitutional authority is not permitted to do indirectly what it cannot do directly as it would amount to colourable exercise of power and consequently a fraud on the Constitution.

Krishna Kumar Singh* v. *State of Bihar

Recently, in 2017, it was held by the Supreme Court that the power to promulgate an Ordinance is not an absolute entrustment but conditional upon two requirements that needs fulfillment. The first requirement is that state legislature shouldn't be in session and the second one being satisfaction of the Governor regarding existence of circumstances rendering immediate action a necessity. These requirements show a clear intent under the Constitution to restrict the Ordinance making power of the Governor within clearly mandated limits. Thus, it was held by the apex court:

> "The power of promulgating ordinances is not an absolute entrustment but conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action."[42]

Therefore, it is clear in this case that the act of the Governor in promulgating the Ordinance under article 213, bypassing the legislative process of the Assembly is arbitrary in nature

[39]*Ibid.*
[40]*D.C. Wadhwa*v. *State of Bihar* (1978) 1 SCC 378.
[41]*Id.,*at40.
[42]*Krishna Kumar Singh* v.*State of Bihar* (2017) 3 SCC 1.

andnot meeting the standards set by the Hon'ble Supreme Court or the Constitution of Indiaand thus, is in violation of article 14 of the Constitution.

VI. CONCLUSION

Choosing to marry a certain person and changing one's religion are intimate choices that should not be put under administrative scrutiny for vague, half-baked reasons. Such matters should not be a concern of the government until and unless the commission of an offence in relation to such act is manifest. Further, there are specific limitations that can be set on religious conversions as provided under article 25 and only such limitations as stand the test of the said article can be said to be valid in this aspect.

An intervention by the Government is necessary if forced conversions are taking place at a scale endangering public order and even in that event, they should be dealt with a remedy which is proportionate and shouldn't overburden the citizens with substantive and procedural provisions that infringe their right to privacy. The apex court in *Rev Stanislaus* designated the furthest limit up to which restrictions could be placed on practice, profession and propagation of religion under article 25. Any restriction beyond that, either under the garb of freedom of religion or for prohibition of unlawful conversion, is unconstitutional. Therefore, in the light of the aforementioned legislative history, interpretation of constitutional principles and judicial precedents, the *Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020*can easily be placed on a higher stratum of privacy invasion and constitutional *ultra vires* than any of the earlier state laws on account of violation of the fundamental rights under articles 14, 19, 21 and 25.

For any secular and democratic government, the best course in respect of such personal affairs of the citizens is minimal interference. The essence of democracy is in the freedom of choice with minimum friction. There is no reason for the government to keep a tab on innocent and sincere choices of the citizens in respect of their faith or love. Such legislations not only interfere with the autonomy of the citizens but also cast a blot on the democratic credentials of the government as well as the country. Therefore, such a path shall be trodden with great caution by the government.