
PROSELYTIZATION AND ANTI-CONVERSION LAWS: A CRITICAL STUDY WITH REFERENCE TO THE KERALITE COUPLE CASE IN UTTAR PRADESH

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ABSTRACT

When does the State's knife to curb coercive and fraudulent conversions turn into a gunfight against personal liberty of an individual? This question highlights the thin line which exists between State protection and encroachment by it. To answer this in detail, the paper delves into the provisions of Uttar Pradesh's Prohibition of Unlawful Conversion of Religion Act, 2021; the most controversial anti-conversion legislation in contemporary India. Alongside the provisions, the paper discusses the recent case of a Keralite couple, which forms the heart of this legal labyrinth, marking their journey through Allahabad High Court¹ and the Special Court², citing contrary opinions and divergent interpretations taken by the Courts; reflecting the dilemma whether a State can truly regulate the matters of religion without surpassing the constitutional boundaries? The paper further juxtaposes India's stance on anti-conversion laws with U.S., U.K., Sri Lanka and Nepal; analysing global interpretation on anti-conversion laws, drawing comparison, the paper aims to suggest certain recommendations which could be implemented to secure a middle ground and build a Nation balanced on protection and choice, strengthening pluralism and constitutional morality.

Keywords: Anti-Conversion Laws, Proselytization, Constitutional Morality, State Intervention.

¹ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

² State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

Introduction

Would it be freedom if it comes tethered to a leash? This contradiction seems to condense the dilemma which surrounds the subject-matter of the Anti-Conversion Laws. A centuries old debate could be seen surfacing back with the enactment of the Prohibition of Unlawful Conversion of Religion Act, 2021³ of Uttar Pradesh; which deals with the limitations put forth on the religious freedoms and the role of the State, in regulating the same. Courts, law makers, and society at large have been at crossroads when it comes to demarcating a balance between the fundamental right guaranteed under Article 25 of the Indian Constitution, to propagate one's religion, and the perceived threat of forced or fraudulent conversions. In a recent conviction by a Special Court⁴, under the same law, involving a Keralite couple⁵, regardless of the observations made by the Allahabad High Court⁶, has recently exemplified the tensions between one's personal liberty and the restrictions imposed by the State.

India has encountered religious pluralism since the advent of its civilization, but the fault lines which exist in its multi-religious fabric have been questioned numerous times. The Indian Constitution, described as the soul of the nation, promises the right to profess, practice, and propagate one's religion, to every citizen. Regardless of this right being guaranteed by the Constitution, it rather finds itself curtailed by several legislative frameworks that claim to protect the atrocities surrounding the said liberty. The conflict between the two is heightened when it comes to the context of proselytization, which could be summed up as an act of introducing individuals to one's faith or inviting them to consider the thought of exploring other faiths; creating a pathway between spirituality and coercion.

The language of the anti-conversion laws is often left broad and open to several interpretations, leaving room for what A.G. Noorani criticizes as "discretion without accountability"⁷; Uttar Pradesh law, granting scope to a similar debate explicitly criminalises religious conversions which are deemed to be forced, fraudulent or induced by allurement of any kind, all of such left undefined. The application of the said law, particularly with regards to the religious

³ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

⁴ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

⁵ The Wire, <https://thewire.in/communalism/keralite-couple-in-up-get-5-years-in-jail-for-converting-dalit-villagers-to-christianity> (last visited Jan 30, 2025)

⁶ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

⁷ A.G. Noorani, *Constitutional Questions in India: The President, Parliament and the States* (Oxford University Press, 2000), at 273

minorities has sparked various concerns, revolving misuse alongside questions of this process being constitutional. Whereas, from the lens of the State, the said law allegedly seeks to protect the vulnerable communities from any kind of exploitation, however, the interchange between religious conversions and caste dynamics have further contributed to complicate this narrative as could be seen in the recent case, which would be discussed further in the paper, involving Dalit villagers in Ambedkar Nagar.

Henceforth, the paper aims to examine the application of Uttar Pradesh's Anti-Conversion Laws, alongside its societal ramifications and constitutional implications. Through an analysis of recent judicial viewpoints including the contradictory positions taken by Allahabad High Court⁸ and the Special Court⁹, the paper delves into the thin line between a State's legitimate interest in public order and encroachment of it on an individual's freedom. To understand the depth of this subject-matter, this paper has attempted to view the said law with a Global lens, analysing the practices partaken in other democracies, while engaging with constitutional dilemmas surrounding proselytization. In due course, the paper aims to answer whether such laws result in the protection of communal harmony or represent an overreach of State's powers, involving the matter of faith and religion.

As the shadows of history lurk, and the debates ignited by Anti-Conversion Laws continue to evolve, standing at the intersection of liberty and reasonable restrictions; the question persists: where does the duty to maintain public order end, and where does an individual's freedom to choose begin?

Anti-Conversion Laws: An Overview

Historical Framework

The emergence of anti-conversion laws could be traced back to the colonial period, in India, whereby the missionary activities and conversions partaken by the Christians, to their religion, has seen a roar and emerged as a challenge to the traditional Hindu and Islamic social orders, which have been in existence in India. Initially, the East India Company maintained the policy of religious neutrality, fearing that any policy brought upon by them would be frowned upon by the native communities and their rulers. However, as these missions saw an uprise in the

⁸ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

⁹ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

19th century¹⁰, a new dynamic had emerged as the said missions involved conversions of the lower-caste communities, specifically the Dalits¹¹; disrupting the social hierarchy and triggering resistance, both politically and culturally.

After India gained its due Independence, the framers of the Constitution too, were grappled and surrounded by the same tensions surrounding one's freedom and maintenance of public order. Whilst, the freedom was guaranteed under Article 25 to 28 of the Indian Constitution, numerous debates had been ensued in the meetings of Constituent Assembly, highlighting the misuse of these freedoms, if left absolute.

Article 25 sparked controversy by the inclusion of the term "propagates" in which prominent figures like K.M. Munshi defended it as being an essential element of one's religious freedom, while the others argued that it could also act as a key to open the door to forced conversions. It was also stated by H.M. Seervai that the concept of forced conversions would be a "calculated risk taken to preserve the ethos of secularism in a multi-religious society"¹².

Henceforth, the first door of anti-conversion laws was opened in the 1960s, where in the state like Odisha and Madhya Pradesh enacted the legislation to regulate religious conversions. The landmark case of *Rev. Stanislaus v. State of Madhya Pradesh*¹³, gave a green light to these legislations, by upholding their constitutionality; putting emphasis on the implied restriction that the right to propagate does not include the right to convert anyone forcibly or fraudulently. While on the one hand the judgement clarified the ambit of Article 25, on the other, critics like A.G. Noorani argue that the anti-conversion laws fail to address or create a balance between an individual's autonomy and state regulation¹⁴.

Constitutional Basis of Anti-Conversion Laws

Article 25 to 28 of the Indian Constitution expressly guarantees freedom to religion, wherein Article 25(1) explicitly provides "every citizen the right to freely profess, practice, and

¹⁰ State Anti-Conversion Laws in India, Library of Congress, <https://maint.loc.gov/law/help/anti-conversion-laws/india.php#history-of-ac-laws> (last visited Jan 30, 2025)

¹¹ Queen, Christopher S. *Buddhist-Christian Studies*, vol. 28, 2008, pp. 168–72. *JSTOR*, <http://www.jstor.org/stable/30152947> (last visited Feb 2, 2025).

¹² H.M. Seervai, *Constitutional Law of India*, 4th ed. (Universal Law Publishing, 2008).

¹³ AIR 1977 SC 908

¹⁴ A.G. Noorani, *Challenges to Civil Rights Guarantees in India* 207-238 (Oxford University Press, 2012).

propagate religion, subject to public order, morality, and health”. Question arises whether this right is absolute within a pluralistic and diverse society like India?¹⁵

As discussed previously, the word “propagate” under Article 25, has sparked various debates in the Constituent Assembly, amongst various prominent figures; wherein some believed it to be an exercise of one’s religious freedom, others feared for its misuse in the way of forced conversions. It was later clarified in the landmark case that the term “propagates”, “does not include the right to convert another individual forcibly, emphasizing that the state has the authority to regulate conversions that disturb public order”¹⁶.

In a commentary on the Indian Constitution by H.M. Seervai, he has questioned, “whether laws restricting conversions could ever align with a truly secular state?”¹⁷, whereby he argued that “the state’s intervention in matters of faith risks breaching the wall of neutrality it must maintain”¹⁸. On the other hand, a similar concern was raised by A.G. Noorani, whereby he observed, “anti-conversion laws, while ostensibly neutral, often target specific religious minorities, undermining the spirit of secularism”¹⁹.

Anti-Conversion Laws: Reference to Uttar Pradesh

The “Prohibition of Unlawful Conversion of Religion Act, 2021” is the present anti-conversion law applicable in the State of Uttar Pradesh, known to the draconian law of its kind. It has defined forced or unlawful conversions as “conversions induced by force, fraud, undue influence, or allurement”, wherein the terms like allurement are left vaguely defined as “including material benefits, better lifestyle promises, or divine blessings”²⁰, open to various interpretations and possibility of misuse.

Anti-Conversion laws have been numerous criticized, including criticism by D.D. Basu; calling such legislations as “creating zones of suspicion”, surrounding the legitimate practices of religious freedoms. Apart from its vagueness, the Uttar Pradesh law mandates submission

¹⁵ Saiya, Nilay & Manchanda, Stuti. (2020). Anti-conversion laws and violent Christian persecution in the states of India: a quantitative analysis.

¹⁶ Rev. Stanislaus v. State of Madhya Pradesh, AIR 1977 SC 908

¹⁷ H.M. Seervai, *Constitutional Law of India*, 4th ed. (Universal Law Publishing, 2008)

¹⁸ *Ibid.*

¹⁹ A.G. Noorani, *Challenges to Civil Rights Guarantees in India* 207-238 (Oxford University Press, 2012).

²⁰ Section 2(a), The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

of prior notice for any kind of religious conversion, igniting fumes from the critics on it being a violation of right to privacy as is recognised in the case of Justice K.S. Puttaswamy v. Union of India²¹.

Furthermore, the Act essentially puts the burden of proof on the accused which challenges the principle of presumption of innocence, which is integral to the criminal jurisprudence, and thus, it is seen that the judicial interpretations of this law have also been varied, like in the Keralite Couple Case, to be discussed further in this paper, Allahabad High Court²² emphasized that "distributing Bibles or discouraging the use of alcohol does not necessarily amount to allurements"²³, while hearing the Bail Application of the accused couple. Regardless of this view, on the contrary, the Special Court²⁴ in Ambedkar Nagar, gave a subsequent conviction, which highlights that the application of this law is abstract and subjective. This diversion in the opinions, also pose a threat to broader implications and challenges in the implementation of these laws.

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021: An Analysis

It has now been established that the India's constitutional promise of one's religious freedom has often found itself at odds with the duty of the State to safeguard the public order, particularly the States with the history of serious communal tensions. Anti-conversion law of Uttar Pradesh, known to be a stringent one, represents such a legal framework, which aims to regulate religious conversions. While the formulators of this legislation argue that the same is necessary to curb and regulate forced conversions, thereby safeguarding vulnerable communities; the critics are of the view point that its vague and ambiguous provisions often grant State with the scope of encroachment on the fundamental rights of the individuals, targeting the religious minorities disproportionately.

This particular section of this paper aims to examine the provisions of this law, before diving into the judicial response on it.

²¹ 2019 (1) SCC 1.

²² Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

²³ The Wire, <https://thewire.in/communalism/keralite-couple-in-up-get-5-years-in-jail-for-converting-dalit-villagers-to-christianity> (last visited Jan 30, 2025).

²⁴ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

Key Provisions of the Act

Firstly, it becomes imperative to note that the Act criminalises the religious conversions which have occurred through:

“Force (Use or threat of physical harm, coercion, or undue influence), Fraud (Misrepresentation, deception, or concealment of information to induce conversion), Allurement (Offering material benefits, better lifestyle prospects, divine blessings, or social upliftment) and Marriage (If religious conversion is undertaken solely for the purpose of marriage)”²⁵.

Secondly, the Act makes it mandatory to make a “prior declaration to be made to the District Magistrate at least 60 days before a conversion takes place, followed by a police inquiry to determine whether the conversion is voluntary”²⁶, this results in the shift of proving the burden on the person converting and the religious leader involved in the facilitation of the conversion.

Thirdly, the Act imposes various penalties like, “Individuals convicted under the Act face imprisonment from 1 to 5 years and fines up to ₹15,000”²⁷ and “If the conversion involves a minor, a woman, or a person from the Scheduled Castes/Scheduled Tribes (SC/ST), the punishment extends to 10 years with a fine up to ₹25,000”²⁸.

Additionally, the Act renders a marriage conducted solely for the purposes of religious conversion as void ab initio, and empowers third parties to file complaints; which could be critiqued as further expanding the scope for its misuse.

The Keralite Couple’s Case: Judicial Implication of the Act

The present case involves a Christian couple from Kerala, Jose Papachen and his wife Sheeja. The said case is seen to present a striking indication as to how the anti-conversion law of Uttar Pradesh is applied in practicality and what implications it could foster. The mentioned couple

²⁵ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

²⁶ Section 8, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

²⁷ Section 5, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

²⁸ *Ibid.*

was accused of illegally converting the Dalits residing in a village in Ambedkar Nagar, Uttar Pradesh; this alleged act was claimed to be constituted by the distribution of the Bible, organizing meetings for religious teachings and offering various material incentives for going through with the conversion.

The legal course of this case has presented a divergent route and contrast between the view taken and interpretation made by the Allahabad High Court²⁹ and the Special Court³⁰ of Ambedkar Nagar; this contrast further elaborates on the discretionary nature of the said Act and the risks involved posing inconsistency in the judicial application of it.

Allahabad High Court's Order: A Liberal Stance

In the aforementioned case, the Allahabad High Court³¹ granted bail to the couple in September 2023, observing that, “distributing religious books, organizing assemblies, and discouraging alcohol consumption do not constitute "allurement" under the Act”³². The Court further observed that the prosecution had failed to establish that there had been any direct evidence of any coercion or material inducement, which could have led to religious conversions punishable under this Act. Additionally, the Court opined that the complainant being a BJP District Secretary, further raises concerns regarding the political backbone of these allegations, making him an unfit category of a “third party” under the Act.

Justice Shamim Ahmed, in the order observed that “mere religious preaching and community activities that promote moral values cannot be equated with unlawful conversion unless backed by substantial evidence of force or fraud”³³.

The viewpoint taken by the High Court is in alignment with the various prior judicial announcements that have upheld the right to propagate one's religion as an essential pellet of Article 25. This order conclusively suggested that “mere suspicion or public resentment against religious activities cannot serve as a basis for criminal liability”. Nevertheless, the said case

²⁹ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

³⁰ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

³¹ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

³² The Wire, <https://thewire.in/communalism/keralite-couple-in-up-get-5-years-in-jail-for-converting-dalit-villagers-to-christianity> (last visited Jan 30, 2025).

³³ *Ibid.*

proceeded to trial whereby a different rigorous approach had been taken by the Special Court, Ambedkar Nagar.

Special Court's Judgment: A Stringent Approach

The Special Court in Ambedkar Nagar³⁴ has convicted the couple on the 22nd day of January 2025, sentencing them to 5 years of imprisonment under Section 5 (1) of the Prohibition of Unlawful Conversion of Religion act 2021. Doing so, the Court has observed the following:

"The couple engaged in systematic proselytization, targeting Dalits³⁵ and vulnerable communities"³⁶.

Rather than a voluntary religious change the witness testimony suggested that the religious conversion was accompanied by material feasts, distribution of the Bible and promises involving divine intervention. Additionally, the pattern wherein multiple individuals were converted in a short span of time, gave an indication of organised inducement, then a voluntary one.

The Special Court further observed that "the intent behind religious gatherings of such kind were sufficient to prove inducement. The broad wording of the Act allowed the presumption of unlawful conversion in cases involving economically disadvantaged communities"³⁷, dismissing any earlier concerns of the High Court.

The said ruling by the Special Court had been a topic of criticism as it expanded the definition of allurement beyond any legal precedents, hinting at creating a presumption of guilt when religious activities or conversions are involved amongst the marginalized communities.

The case now awaits to be appealed before a higher bench of the Allahabad High Court³⁸, wherein it would be reconsidered whether the stance taken by the Special Court³⁹ aligns

³⁴ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

³⁵ Queen, Christopher S. *Buddhist-Christian Studies*, vol. 28, 2008, pp. 168–72. *JSTOR*, <http://www.jstor.org/stable/30152947> (last visited Feb 2, 2025).

³⁶ Sessions Case/ 166/ 2023, https://ambedkarnagar.dcourts.gov.in/wp-admin/admin-ajax.php?es_ajax_request=1&action=get_order_pdf&input_strings=eyJjaW5vIjoiVVBBTjAxMDAwOTg3MjAyMyIsIm9yZGVyX25vIjoxLCJvcnRlcl9kYXRlIjoiMjAyNS0wMS0yMiJ9 (last visited Jan 30, 2025).

³⁷ *Ibid.*

³⁸ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

³⁹ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

constitutionally.

Judicial Inferences of the Act

The aforementioned case exemplifies the dangers involved in the cases registered under this Act, especially when they are politically charged or based solely on discretion. While an evidence-based jurisprudence has been followed by the Allahabad High Court⁴⁰, the Special Court have taken a broad and liberal interpretation of the Act, rather setting a significant precedent which could in many ways impact the religious minorities and marginalised communities in Uttar Pradesh.

This contrast in the judicial stances further calls out for the intervention by the Supreme Court with the aim of clarifying the application of anti-conversion laws in the contemporary period. It becomes imperative to evaluate whether such laws truly safeguard as depicted or act as means of majoritarian control facilitating constitutional overreach?

Proselytization and Legal Dimensions Involved

Caught between the dilemma of constitutional guarantee and legislative restrictions⁴¹ on it, the process of religious conversions has been a contested matter in India. Similarly, the legislation enacted in Uttar Pradesh raises several legal conflicts, creating a wall between an individual's autonomy/ freedom and the duty of the State⁴².

This section of the paper aims to analyse the said pellets of legal conflicts arising from the application of this legislation, underlining constitutional conflicts, judicial viewpoints upon it and potential window of misuse.

Anti-Conversion Laws and Article 25

The fundamental or primary dilemma which is posed by the anti-conversion laws, legally, is the potential encroachment upon the freedom granted under Article 25 of the Indian

⁴⁰ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

⁴¹ Law Commission of India, *Report No. 235 on Conversion and the Law*, (2009), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081081-1.pdf> (last visited Feb 3, 2025).

⁴² Laura Dudley Jenkins, Legal Limits on Religious Conversion in India, 71 *Law and Contemporary Problems* 109-128 (Spring 2008), <https://scholarship.law.duke.edu/lcp/vol71/iss2/9> (last visited Feb 3, 2025).

Constitution, guaranteeing an individual the right to profess, practice and propagate religion.

However, it has been established in the landmark case of *Rev. Stanislaus v. State of Madhya Pradesh*⁴³, by the Supreme Court that the right to propagate under Article 25 does not include the right to convert others, forcibly. Explicitly, this judgement did not bar voluntary conversions nor did it aim to establish a pre-emptive control of State over religious conversions, as could be seen in the application of anti-conversion laws.

Another view regarding the said encroachment, by the State could be witnessed when it is made mandatory to provide prior notification to the State, by the individuals willing to undergo religious conversion, requiring individuals to justify their religious choices; rendering it a State-controlled privilege, rather than one's fundamental right.

This restrictive interpretation of Article 25 by the justifiers of Anti-Conversion Laws has been criticised by H.M. Seervai stating that "a secular state should not interfere in religious decisions unless public order is directly threatened". Similarly, D.D. Basu has commented, "such laws disproportionately burden religious minorities, restricting their right to propagate religion while leaving majoritarian religious practices largely unchecked"⁴⁴.

While the State argues that reasonable restrictions and checks are to be imposed by the way of anti-conversion laws, to curb the practices of forced conversions, especially in the States with high communal tensions.

Nevertheless, the legal dilemma regarding Article 25 revolves around whether the State regulation of religious conversions is a legitimate measure needed to prevent coercion or amounts to encroachment by the State on religious freedom.

Clash with the Principles of Criminal Law

The basic principle of natural justice, presumption of innocence, which has been incorporated in the criminal jurisprudence; the anti-conversion law of Uttar Pradesh reverses the said principle, by placing the burden of proof on the accused rather than it being on the prosecution.

⁴³ AIR 1977 SC 908

⁴⁴ D.D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2016).

This reversal could be argued to be a violation of one of the fundamental principles of fair trial, enshrined under Article 21.

This was applied by the Special Court in the previously discussed case, where the Court relied heavily upon assuming that the conversions that had happened were by default, caused by allurement, rather than them being voluntary.

This pellet of the dilemmas question whether the said law has been enacted as a protective measure or a tool which could be used for suppressing religious freedom through procedural sprints.

Ambiguity in the Legal Terms

Another branch of dilemma arises from the fact that there is ambiguity in the words used in the Act, predominantly the word “allurement” and “fraud”, defined under Section 2(a) of the Act as follows:

“Allurement as including material benefits, reputation, or divine blessings”⁴⁵; rendering the definition left open for broad interpretation as, if the term “divine blessings” could constitute allurement, then each and every act of any religion, including any religious preaching, could be constituted as “allurement”.

This ambiguity leaving room for broad interpretations, grants heavy discretion to the Courts in determining what religious act could be considered as an allurement, eventually granting an uncharted space for deciding whether a conversion for legal or not.

The order passed by the Allahabad High Court⁴⁶, acknowledging the ambiguity in the legislation opined that “merely distributing Bibles or discouraging alcohol consumption could not constitute inducement”⁴⁷.

However, on the contrast the Special Court⁴⁸ took an expanded interpretation and held that

⁴⁵ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, No. 03, Acts of Uttar Pradesh, 2021.

⁴⁶ Jose Papachen v. State of Uttar Pradesh, Bail Order, Allahabad High Court, (Sept. 2023).

⁴⁷ The Wire, <https://thewire.in/communalism/keralite-couple-in-up-get-5-years-in-jail-for-converting-dalit-villagers-to-christianity> (last visited Jan 30, 2025).

⁴⁸ State v. Jose Papachen, Conviction Judgment, Special Court, Ambedkar Nagar (Jan 22, 2025).

religious gatherings resulting in conversion of multiple individuals in a short span of time, were prominent and sufficient pointers of allurement.

This pellet of the dilemmas underlines the arbitrary risk involved in the application of the laws and the potential of criminalisation of religious conversions, based upon the subjective and abstract interpretations by the Courts.

Mandate of Prior Notification

The legislation mandates a prior notification to the State authorities, regarding the religious conversion; this mandate raises several concerns regarding the right to privacy of an individual, establish under the case of Justice K.S. Puttaswamy v. Union of India⁴⁹. This calls out for the question whether right to privacy cover under its ambit the protection of personal decisions, such as religious beliefs.

By the said provision, the legislation exposes the individuals to State surveillance and poses possible threat of harassment by the religious community they are converting from, alongside intruding on their personal faith and belief choices.

This pellet of the dilemmas raises a question as to whether a State could demand disclosure of one's religious choices, encroaching upon the right to privacy?

Protection or Suppression: A Legal Tightrope

The "Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021"⁵⁰, as discussed above presents various pellets of legal dilemmas, that underway challenges various principles established constitutionally. The case of a Kerala couple, as mentioned earlier, exemplifies the extent to which these dilemmas work out in application, granting room to the Courts to take contrary viewpoints and different interpretations, based on their subjective reading and abstract idea of inducement, allurement and coercion.

As this paper moves to the next section, it aims to lay out how other democracies in the world regulate the process of proselytization, dealing with their individual liberties and State's duty, either creating a balance or an overseeing overlap between the two. This comparison would

⁴⁹ 2019(1) SCC 1

⁵⁰ No. 03, Acts of Uttar Pradesh, 2021.

also result in the understanding of whether India's approach towards this is tilted towards constitutional morality or veers in the direction of a majoritarian framework.

Proselytization and Anti-Conversion Laws: A Global Approach

The discussions and debates regarding application of anti-conversion laws, not being limited to India, have grappled many nations with its surrounding dilemmas, the struggle to balance individual rights and State intervention, remains constant across democracies. While some aim to grant proselytization as an individual's fundamental right, others aim to govern and restrict religious conversions, to protect and preserve the social order.

This part of the paper aims to understand how the other democracies have bridged the gap between the two conflicting ideas, highlighting the difference between the subjective view of these countries as opposed to India.

United States: First Amendment

The process of proselytization is protected under the First Amendment, which states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech⁵¹, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"⁵². Henceforth, the U.S. Supreme Court has upheld the right to convert of the individuals, numerous times, ruling that State intervention cannot be upheld unless done to avoid immediate violence or harm, or incitement of any such violence⁵³.

In the case of *Cantwell v. Connecticut*⁵⁴, the Court held with regards to the process of proselytization that "while the maintenance of public order was a valid state interest, it could not be used to justify the suppression of free communication of views. The *Cantwell*'s'

⁵¹ United Nations Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience, and Religion* (Art. 18), CCPR/C/21/Rev.1/Add.4 (1993).

⁵² First Amendment, National Constitutional Center, https://constitutioncenter.org/the-constitution/amendments/amendment-i?gad_source=1&gclid=CjwKCAiAzPy8BhBoEiwAbnM9O5OfSDsPjO8pCZCiD5PzOBPidCek7L5nTpMDjJPbPS1E9tzreESPbRoCNxoQAvD_BwE (last visited Feb 3, 2025).

⁵³ U.S. Commission on International Religious Freedom, *Issue Update: India's State-Level Anti-Conversion Laws* (2023), available at <https://www.uscifr.gov/sites/default/files/2023%20India%20Apostasy%20Issue%20Update.pdf> (last visited Feb 3, 2025).

⁵⁴ *Cantwell v. Connecticut*, Oyez, <https://www.oyez.org/cases/1940-1955/310us296> (last visited Feb 3, 2025).

message, while offensive to many, did not threaten bodily harm and was protected religious speech”⁵⁵.

United Kingdom: European Convention on Human Rights

A nuanced approach could be seen to be followed in the United Kingdom, similar to the one followed in India, whereby the process of conversions is protected, and there are no specific anti-conversion laws in force, but, a direct coercion or an undue influence could bring in legal consequences.

Article 9 provides that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”⁵⁶.

Henceforth, the legal system of the UK allows the courts to invalidate any religious conversion that involves psychological manipulation.

The religious freedoms of an individuals are protected under Section 10 of the Equality Act, 2010 and on the similar instance, any kind of discriminatory or aggressive act, including the act of proselytization if done as an act of discrimination, is restricted under the same Act⁵⁷.

Sri Lanka: A Determinate Push Towards Anti-Conversion Laws

The Constitution of Sri Lanka grants the position of primacy to Buddhism, while granting rights to other religions as well. Article 9 states that “The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and

⁵⁵ *Ibid.*

⁵⁶ Article 9, European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_ENG (last visited Feb 3, 2025).

⁵⁷ Section 13, Equality Act, 2010, <https://www.legislation.gov.uk/ukpga/2010/15/contents> (last visited Feb 3, 2025).

14(1)(e)”⁵⁸. To further the rights of the individuals of other religions, Article 10 provides, “Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice”⁵⁹ and Article 14(1)(e) states, “the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching”⁶⁰.

While granting the aforementioned freedom, Article 15(7) of the Constitution also poses restrictions on the said rights by stating, “The exercise and operation of all the fundamental rights declared and recognized by Article 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society”⁶¹.

This restriction applied on Article 14(1)(e) by Article 15(7) allows the State to intervene with the freedom of the individuals and frame anti-conversion laws, and many such laws have seen the light of the day in the past in Sri Lanka, but none have been able to survive, either due to its stringent provisions allowing broad interpretations or due to the provisions which banned religious conversions altogether, making them unconstitutional⁶².

Nepal: A Stern Approach

Nepal is known to have one of the most stringent anti-conversion laws in South Asia, with its constitution expressly criminalizing the process of religious conversions. Whereas Article 4 of the Constitution states that the State of Nepal is a “secular”⁶³ State, and with Article 26 guaranteeing the Right to Freedom of Religion, stating, “Every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or

⁵⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka, <https://www.parliament.lk/files/pdf/constitution.pdf> (last visited Feb 3, 2025).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Anti-Conversion Laws and the International Response, Meghan Grizzle Fischer, https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf (last visited Feb 3, 2025).

⁶³ The Constitution of Nepal, https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov._npDate-72_11_16.pdf (last visited Feb 3, 2025).

her conviction”⁶⁴; but the same Article poses restriction on this freedom stating, “No person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardize other's religion”⁶⁵. Additionally, the General Code of Nepal states that “No one shall propagate any religion in such manner as to undermine the religion of other nor shall cause other to convert his or her religion. If a person attempts to do such act, the person shall be liable to imprisonment for a term of Three years, and if a person has already caused the conversion of other's religion, the person shall be liable to imprisonment for a term of Six years, and if such person is a foreign national, he or she shall also be deported from Nepal after the service of punishment by him or her”⁶⁶, furthering the restrictions on religious conversions. Lastly, to further restrict the religious conversions indefinitely, Section 9 Clause 158 of the Criminal Code 2074 reads that “No one should involve or encourage in conversion of religion. No one should convert a person from one religion to another religion or profess them own religion and belief with similar intention by using or not using any means of attraction and by disturbing religion or belief of any ethnic groups or community that being practiced since ancient times. If found guilty; there will be punishment of five years of imprisonment and penalty of fifty thousand rupees. If foreigners are found guilty; they will have to be deported within seven days after completing the imprisonment in third clause”⁶⁷.

These provisions have resulted in heavy criticism and sanctions on Nepal by European and Western countries, highlighting suppression of religious minorities, but Nepal's stance remains unaffected, barring religious conversions in the broadest context.

Proselytization: Where Does India Stand?

The global comparison, citing instances of countries like Nepal and Sri Lanka with restrictive religious policies and on the other hand, countries like U.S. and U.K. with a rather liberal approach; this demarcates India taking the middle ground between the approaches. To my understanding, India is far from taking a stringent and restrictive approach towards religious

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Anti-Conversion Laws and the International Response, Meghan Grizzle Fischer, https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf (last visited Feb 3, 2025).

⁶⁷ *Ibid.*

conversions, even though the anti-conversion laws leave a broad scope of interpretations, the general purview taken by the Courts is a liberal one, securing the secular nature of the country and granting religious freedoms to the individuals with the maintenance of public order, protecting interests of people⁶⁸.

Regardless, there are some reforms which could be made in the provisions of the Anti-Conversion Laws, which would prevent the curtailment or any encroachment of the State on one's constitutional right; some of such have been discussed in the next section of the paper.

Concluding Remarks: Pathway to a Balanced Constitutional Morality

The anti-conversion laws in India, specifically the Prohibition of Unlawful Conversion of Religion Act, 2021 of Uttar Pradesh could give home to a number of reforms and changes, which could define its scope and aim and remove it from the radar of criticism. Following are the few recommendations which if implemented to narrow down the scope of political misuse and safeguard the constitutionally guaranteed fundamental right of religious freedoms⁶⁹.

Various changes could be made in the existing anti-conversion laws to protect the rights and interests of the individuals, while maintaining the duty of the State to safeguard the public order. These changes could be:

The term "allurement" currently includes "divine blessings", such could be made more definite or narrowed down to inclusion of just material benefits, such that any religious practice could not be made part of it, limiting the scope of discretion.

The mandate of prior notification should also apply on "re-conversions", along with the other provisions of the Act, as such practice would curb the belief of majoritarian supremacy connected with anti-conversion laws. Restoring the burden of proof on the prosecution could reinstate the faith of the people on the State, such that there would be no *prima facie* political misuse involved when religious conversions would be presumed voluntary in the first instance.

These amendments could possibly define the scope and ambit of anti-conversion laws, building

⁶⁸ Anti-Conversion Laws and the International Response, Meghan Grizzle Fischer, https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf (last visited Feb 3, 2025).

⁶⁹ *Ibid.*

belief of the people on them, subtracting the possibility of political misuse⁷⁰. Regardless of what the Supreme Court had established in the case of *Rev. Stanislaus v. State of Madhya Pradesh*, the interpretation taken by the lower courts have varied from liberal to strict, open to the court's abstract idea and understanding of the provisions, thus, rendering variations in the decisions. To curb this, the Hon'ble Supreme Court could provide guidelines or lay down an approach which has to be followed by the Courts while deciding the matters of religious conversions, this could help with the contrary opinions and provide uniformity across, again preventing any arbitrariness.

Furthermore, specific courts could be set up dealing with the matters of religious conversions, wherein it could be ensured that the cases are heard by the Judges, following the policies and guidelines provided by the superior courts on neutrality, barring any political immersion or stimulus.

The conflict that arises with the clash between religious freedom and anti-conversion laws is a test⁷¹, rather than a debate, as to how a State reconciles individual freedom with societal concerns and safety. The case of the Keralite couple in Uttar Pradesh stands high as a marking moment in this test, as it reflects the attempt of the State to regulate fraudulent and forced conversions, protecting vulnerable communities, yet on the other hand, the broad provisions of the Act make room for legal ambiguity and such application of the provisions which could encroach upon the fundamental rights of the individuals.

The right to profess, practice and propagate one's religion is an integral part of India being a secular State⁷², while the concerns regarding forced conversions cannot be ignored, the challenge lies in ensuring that the one does not suffocate the other.

To move forward and step into a balanced system, legislative amendments, judicial clarity and India's commitment to being a secularist State will pave the way forward. The legal framework must evolve, it must evolve as a tool of safeguard rather than it being a restriction, upholding

⁷⁰ The Wire, <https://thewire.in/communalism/keralite-couple-in-up-get-5-years-in-jail-for-converting-dalit-villagers-to-christianity> (last visited Jan 30, 2025).

⁷¹ D.D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2016).

⁷² A.G. Noorani, *Challenges to Civil Rights Guarantees in India* 207-238 (Oxford University Press, 2012).

the protection and choice of an individual, reincarnating India's commitment to diversity, plurality and constitutional morality.⁷³

⁷³ State Anti-Conversion Laws in India, Library of Congress, <https://maint.loc.gov/law/help/anti-conversion-laws/india.php#history-of-ac-laws> (last visited Feb 5, 2025).

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