

ಪತ್ರಿಕಾ ಖಚನಕಗಲು
PAPER CLIPPINGS

ಇಲಾಖೆ / ವಿಷಯ : DEPARTMENT / SUBJECT:

32

Other state matters

ಪತ್ರಿಕೆಯ ಹೆಸರು : NAME OF THE NEWS PAPER:

The Hindu

ದಿನಾಂಕ : DATE : 27/11/20

Policing faith

Anti-conversion laws that bar intermarriages will lead to the path of social regression

The proposed Uttar Pradesh ordinance seeking to prohibit "unlawful" religious conversions represents a regressive march towards unacceptable medievalism and a reprehensible zeal to police the private lives and beliefs of citizens. Cleared for promulgation by the Governor, it does not use the Islamophobic term that votaries of Hindutva have been bandying about to denote certain inter-faith marriages, but it is clearly targeted at the idea. It eschews the phrase "freedom of religion" that several other anti-conversion laws in other States have employed to title their laws. However, apparently inspired by similar legislation in Himachal Pradesh and Uttarakhand, it has sought to include "alluring into marriage" as an additional ground for declaring an instance of religious conversion as illegal, apart from the use of "force, coercion, undue influence and deceit". The U.P. proposal envisages prison terms, from one to five years in general, three to five years for conversions involving women and SC/ST members, and adds a possible three to 10-year jail term for "mass conversion". There is also a prior declaration provision on an intended conversion. These suggestions were contained in a report of the Uttar Pradesh State Law Commission submitted last year. While the panel had suggested that conversion solely for marriage should be declared null and void, the State's note on the ordinance says it provides for invalidation of marriages solemnised solely for conversion.

While upholding the validity of the Freedom of Religion Acts of Madhya Pradesh and Odisha, in *Stanislaus* (1977), the Supreme Court had held that the "right to propagate" a religion did not include the "right to convert". However, those early laws did not bar conversions by marriage. The Himachal Pradesh, Uttarakhand, and the proposed U.P. law would be vulnerable on that score. After the Court's "right to privacy" judgment, and the *Shafin Jahan-Hadiya* case (2018), it would be no more constitutional to use "marriage" as a ground for prohibiting conversion, as it involves the rights of privacy, choice and marital freedom. Further, all such previous laws were seen as "public order" legislation – the claim is that "forced" or "fraudulent" conversions lead to disturbance of order. An inter-faith marriage, by itself, is unlikely to be seen by the courts as an event impinging on public order. Therefore, making marriage *simpliciter* a ground for rendering conversion illegal may not survive judicial scrutiny. Probably to avoid this lacuna, the U.P. ordinance uses the term "allurement by marriage", but its potential for misuse is the same. Further, the provision on mandatory prior declaration of an intent to convert is similar to the one struck down by the Himachal Pradesh High Court in 2012 as violating the right to keep one's faith a secret. It is disconcerting that several States are keen to join this bandwagon against inter-marriages despite its potential for deepening social discord and communal divides.