



drishti

## Inter-Faith Marriage & Personal Liberty

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This article is based on **“UP anti-conversion law pushes women back under parental and community control”** which was published in The Indian Express on 17/12/2020. It talks about the issues related to laws regarding the prohibition of unlawful conversion of religion.

Recently, the Government of Uttar Pradesh has passed the **Prohibition of Unlawful Conversion of Religion Ordinance 2020**. Many other states are also in the process of similar laws.

The UP ordinance prohibits any religious conversion due to coercion, force, undue influence, allurements, fraud or by marriage and makes such a marriage liable to be declared void. It also makes such an act of conversion a non-bailable criminal offence.

However, the law has been criticised as being a violation of an individual's right to marry a person of one's choice and being restrictive of the fundamental right to life, autonomy and privacy.

Moreover, the law has roots in the patriarchy and communalism, which may affect social harmony and respect for individual dignity.

### Issues Related to The Proposed Law

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- **Interfering With Secularism:** Indian Constitution enshrines secularism as one of the cardinal principles.  
Despite this, several states have had anti-conversion laws for a long time, including Odisha, Arunachal Pradesh, Gujarat, Himachal Pradesh and Jharkhand.
- **Against Personal Liberty:** According to Articles 25 to 28, an Indian citizen is guaranteed the freedom to practise any religion of his or her choice.  
Through this ordinance, the State wants to intervene not only in the citizens' personal liberty by interfering with the choice of their spouse.

- **Asymmetrical With Various Supreme Court’s Judgment:** The Supreme Court in **Shafin Jahan v Ashok KM (2018)**, has upheld the right to marry a person of one’s choice as a part of Article 21.
  - According to the Supreme Court, the Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Therefore, the right to marry a person of one’s choice is integral to Article 21 of the Constitution.
  - Further, Supreme Court in **K.S. Puttaswamy v UOI (2017)** judgment held that “right of choice of a family life” as a fundamental right.
  - The ordinance is a conflict with these judgments as it limits the choice of a prospective spouse such that this spouse would only be one approved by the State.
- **Reverse Burden of Proof:** The Uttar Pradesh anti-conversion ordinance allows any relative of the woman to challenge the legitimacy of her marriage.
  - In this case, the reverse burden of proof would apply, wherein the person who facilitated the conversion would need to prove that it was not forced while disregarding the woman’s testimony of having consented to the conversion and marriage.
  - This is a direct violation of the right to be deemed innocent until proven guilty; an aspect that is particularly worrying for women exercising their right to choose their life partners.
- **Patriarchal Roots:** This shows the law has deep-seated patriarchal roots, wherein women are infantilised, placed under parental and community control, and denied the right to take life decisions, should those decisions not be agreeable to their guardians.
 

Historically, marriage has been a tool to control women’s sexualities, promulgate caste lineage and stop women from exercising their autonomy. This communal propaganda does nothing to safeguard women’s rights, rather it further curtails their mobility, social interactions and freedom of choice.
- **Deep-Rooted Prejudice:** This deep-rooted opposition to interfaith marriage is comparable to a similar deep-rooted opposition to inter-caste marriage, in that both stem from historical prejudices between specific communities.
  - Recognising this prejudice, some members of the Sub-Committee on Fundamental Rights, especially the women members Rajkumari Amrit Kaur and Hansa Jivraj Mehta, advocated for the inclusion of interfaith marriage as a fundamental right.
  - They wanted to introduce a constitutional provision to require the state to remove any impediments to inter-faith marriages so that the social stigma against such marriages is removed.

## Conclusion

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Young Indian women of all faiths are increasingly seeking freedom — to work, study, marry who they choose and live life on their own terms. These basic rights must not be questioned or curtailed.

A woman’s agency is her own, and no parent, relative or state apparatus should be given the authority to coerce her. The attempt to rob women of their agency is an attempt to produce a docile female population that does as it is told, and does not rebel against societal and familial directives.

### ***Drishti Mains Question***

In a conservative society with moral policing, any law to curb interfaith marriages is an assault on the rights of young men and women. Discuss.



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<https://youtu.be/mYFT9YBuAUM>

This editorial is based on “**Big stakes for Apple & India, need to address all issues**” which was published in The Financial Express on December 17<sup>th</sup>, 2020. Now watch this on our Youtube channel.