

Gujarat Freedom of Religion (Amendment) Act, 2021 (Gujarat Anti-Conversion Law)

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The Gujarat High Court recently stayed key provisions of The Gujarat Freedom of Religion (Amendment) Act, 2021 pertaining to marriages involving religious conversion of either of the two parties. It said the “rigours” of the State’s amendments introduced earlier this year will not apply to marriages that do not involve any fraud, force or allurement. In this context, let us understand the judicial pronouncements related to interfaith marriages in India.

In news: Faith and marriage: On anti-conversion laws

Placing it in syllabus: Law & Policy

Dimensions

- Key provisions of the act
- Issues with the law
- Supreme Court judgements on Inter religious marriages and conversions
- High court pronouncement
- Brief on anti-conversion laws in other states

Content:

Key provisions of the act:

- Gujarat Freedom of Religion (Amendment) Act, 2021 **amended the 2003 Gujarat Freedom of Religion Act.**
- It seeks to **end conversion through unlawful means**, specifically prohibiting any conversion for marriage, even if it is with the consent of the individual except when prior sanction is obtained from the state.

- Amended Section 3 makes **interfaith marriage as a criminal offence**.
- It **proposes punishment of 3-10 years** in jail for forcible or fraudulent religious conversions through marriage.
- The law even **allows distant family members to file a criminal complaint**.
- It shifts the **burden of proof of a lawful religious conversion from the converted to his/her partner**.
- Under this Act, **all offences are non-bailable**, attracting a jail term of up to 10 years.
- It also **mandates prior permission from District Magistrate** for conversion

Issues with the law:

The Gujarat Anti-Conversion Law is criticised for the following issues:

- **Vagueness**: It defines “allurement” for religious conversion in vague, over-broad terms
- **Discrimination**: It prescribes different jail terms based on gender
- **Intrusive**: It also tests the limits to which the state can interfere in the personal affairs of individuals. The law interferes in an individual’s agency to marry a partner from a different faith and to choose to convert from one’s religion for that purpose. It legitimises the intrusion of family and the society at large to oppose inter-faith marriages.
- **Violates FRs**: It impinges upon fundamental rights of freedom to propagate one’s religion (Art.25) and the right to choose a partner (Art 21)
- **Disproportionate Powers to State**: It gives disproportionate powers to the state to conduct a police inquiry to verify the intentions of the parties to convert for the purposes of marriage.

Supreme Court judgements on Inter-religious marriages and conversions

Stanislaus v. State of Madhya Pradesh, 1977

- In this case, the Supreme Court of India considered the issue of whether the fundamental right to practise and propagate religion includes the right to convert.
- It held that the right to propagate does not include the right to convert and therefore upheld the constitutional validity of the laws enacted by Madhya Pradesh and Odisha legislatures prohibiting conversion by force, fraud or allurement.
- Referring to Article 25(1), Chief Justice Ray, writing for the Court, held: What the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets.

Hadiya case (Shafin Jahan v. Asokan K.M), 2018

- The Supreme Court observed that, Marital status is conferred through legislation or custom. The High Court was wrong in letting parental love and concern override the right of an adult to choose who she wishes to marry.
- Moreover, the Constitution guarantees that the ability to take such decisions is a part of liberty and individual autonomy.
- The **right to marry a person of one's choice is integral to Article 21.**
- Choice of a partner lies within the exclusive domain of an individual, and is a part of the core zone of privacy, which is inviolable.
- Thus, the High Court was wrong in using its powers under Article 226 to annul Hadiya's marriage with Shafin Jahan.

Lata Singh vs State Of U.P. & Another

- Lata Singh Case was a landmark case in which the Supreme Court provided unwavering support of a woman's right to choice.
- The court observed that in a free and democratic country like India, once a person becomes a major he or she can marry whosoever he/she likes.
- Inter-caste marriages are in fact in the national interest as they will result in destroying the caste system.
- The Supreme Court quashed the criminal proceedings against the petitioner's husband and relative stating them to be falsely accused for the same.

Salamat Ansari and Ors v. State of Uttar Pradesh, 2020

- The Allahabad High Court cancelled a case against a Muslim man (Salamat Ansari), filed by the parents of his wife (Priyanka Kharwar (now Alia)) who converted to Islam before marrying him.
- The High Court declared that religious conversions, even when made solely for the purposes of marriage, constituted a valid exercise of a person's liberties.
- It ruled that the freedom to live with a person of one's choice is intrinsic to the fundamental right to life and personal liberty.
- The order thus recognised that Indian society rested on the foundations of individual dignity.
- This means that a person's freedom is not conditional on the caste, creed or religion that her partner might claim to profess.
- By invoking the SC's judgment in Puttaswamy case, the HC held that an individual's ability to control vital aspects of her life inheres in her right to privacy.
- This promise includes the preservation of decisional autonomy, on matters including of "personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation".

- According to the HC, the Constitution is violated every time matters of intimate and personal choice are made vulnerable to the paternal whims of the state.

High Court pronouncement:

- A Division Bench of the Gujarat High Court comprising Chief Justice Vikram Nath and Justice Biren Vaishnav have granted an interim stay on certain provisions of the amendment that interfere with interfaith marriages.
- the bench observed that it was necessary to “protect the parties solemnized in interfaith marriage from being unnecessarily harassed”.
- The division bench of Chief Justice Vikram Nath and Justice Biren Vaishnav in the interim order granted stay on section-3, 4, 4-A, 4-C, 5, 6 and 6A of Gujarat Freedom of Religion (Amended) Act, 2021.

The other provisions stayed include:

- **Section-3** of the old law prohibited forcible conversion. The court said it interferes with the intricacies of marriage including the right to the choice of an individual, thereby infringing Article 21 of the Constitution Of India
- **Section 6A** that reverses the burden of proof on the partner of the converted spouse to prove that he/she did not coerce the other spouse;
- **Section 4**, which allows the aggrieved person, their parents, brother, sister, or any other person related by blood or marriage or adoption to file an FIR challenging the conversion and subsequent marriage.
- **Sections-5 and 6** stipulate prior permissions of district collector in case of conversion and for prosecution.

Brief on anti-conversion laws in other states

- Uttar Pradesh, Madhya Pradesh and Himachal Pradesh too, have also enacted similar laws.

- The key difference in the new laws is that they seek to criminalise conversions solely for the purpose of marriage.
- All three laws declare such marriages as “null and void” and the penalising of conversions done without the prior approval of the state
- They differ in the quantum of punishment prescribed, and in attributing the burden of proof that a conversion is lawful.

Mould your thought: In light of the recent Court judgements, critically evaluate the Gujarat Freedom of Religion (Amendment) Act, 2021

Approach to the answer:

- Introduction
- Discuss the provisions of the Act
- Discuss, briefly, SC judgements on Interfaith Marriages
- Discuss the issues with the Gujarat Anti-Conversion Law
- Discuss the order of Gujarat HC and its implications
- Conclusion